
HOUSE BILL 1844

State of Washington

66th Legislature

2019 Regular Session

By Representatives Chandler, Hudgins, Smith, Tarleton, and Lekanoff

Read first time 02/01/19. Referred to Committee on Innovation, Technology & Economic Development.

1 AN ACT Relating to requiring modular contracting for information
2 technology procurement by state agencies; amending RCW 39.26.090,
3 39.26.125, and 39.26.100; adding a new section to chapter 39.26 RCW;
4 and adding new sections to chapter 43.105 RCW.

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

6 **Sec. 1.** RCW 39.26.090 and 2012 c 224 s 10 are each amended to
7 read as follows:

8 The director shall:

9 (1) Establish overall state policies, standards, and procedures
10 regarding the procurement of goods and services by all state
11 agencies;

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

14 (3) Establish procurement processes for information technology
15 goods and services, including processes consistent with sections 2
16 and 3 of this act, using technology standards and policies
17 established by the office of the chief information officer under
18 chapter ((43.41A)) 43.105 RCW;

19 (4) Enter into contracts or delegate the authority to enter into
20 contracts on behalf of the state to facilitate the purchase, lease,
21 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;

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

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

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

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

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

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

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

1 States secretary of transportation pursuant to the energy policy and
2 conservation act (15 U.S.C. Sec. 2002); and

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

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 39.26
6 RCW to read as follows:

7 (1) State agencies must use the modular contracting method for
8 the procurement of information technology systems with an estimated
9 cost in excess of one million dollars, except for the procurement of
10 commercially available off-the-shelf products such as monitors,
11 tablets, or commercially available off-the-shelf software. The
12 modular contracting method is an acquisition strategy that breaks up
13 large, complex procurements into multiple tightly scoped projects
14 that are procured in increments to implement information technology
15 systems in successive, interoperable segments.

16 (2) Under modular contracting, the procurement of an information
17 technology system must be divided into several smaller procurement
18 increments that:

19 (a) Comply with the statewide information technology standards
20 under chapter 43.105 RCW;

21 (b) Are easier to manage individually than one comprehensive
22 procurement;

23 (c) Address complex information technology objectives
24 incrementally;

25 (d) Provide for delivery, implementation, and testing of workable
26 systems or solutions in discrete increments, each of which comprises
27 a system or solution that is not dependent on a subsequent increment
28 in order to perform its principal functions;

29 (e) Provide an opportunity for subsequent increments of the
30 acquisition to take advantage of any evolution in technology or needs
31 that occurs during conduct of the earlier increments;

32 (f) Conform to the state agency's master information technology
33 architecture; and

34 (g) Perform consistently with the performance requirements of the
35 completed, overall system within which the information technology
36 will function and meets interface requirements with succeeding
37 increments.

38 (3) Terms contained in the contracts awarded under this section
39 and section 3 of this act must:

- 1 (a) Be simplified and easily understood by a reasonable person;
- 2 (b) Require that custom developed software be open source code,
3 except when meeting this requirement will substantially reduce the
4 number of bidders or substantially increase the cost of the project;
- 5 (c) Require that the state maintain ownership of all data and
6 application programming interface;
- 7 (d) Specify that additional costs due to a change in the scope of
8 a project shall be the sole responsibility of the vendor when the
9 changes do not materially impact the project deadline or the cost of
10 the project;
- 11 (e) Require that the vendor comply with content and data
12 protection security and infrastructure system security policies
13 adopted pursuant to section 5 of this act; and
- 14 (f) Require a process for including end user customer involvement
15 in the development of the project, including the solicitation and
16 incorporation of end user customer feedback whenever reasonably
17 appropriate.
- 18 (4) To the maximum extent practicable, a state agency should
19 award a contract for an increment of an information technology
20 procurement within one hundred eighty days after the solicitation is
21 issued and, if the contract for that increment cannot be awarded
22 within that period, the state agency should consider cancellation of
23 the increment.
- 24 (5) The information technology provided for in a contract for
25 procurement of information technology should be delivered within
26 eighteen months after the solicitation resulting in award of the
27 contract was issued.

28 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.105
29 RCW to read as follows:

- 30 (1) State agencies may establish a prequalified vendor pool for
31 each information technology project for which the agency is procuring
32 goods or services using modular contracting. A prequalified vendor
33 pool consists of a prequalified group of vendors that the state
34 agency may choose to issue solicitation for bids to throughout the
35 project. Vendors are accepted into a prequalified vendor pool in
36 accordance with requirements established under subsection (2) of this
37 section.
- 38 (2) The office and the department of enterprise services shall
39 collaborate to establish requirements for the selection process of

1 vendors for prequalified vendor pools. The office and the department
2 of enterprise services may consider the following factors, where
3 applicable, when establishing such requirements:

4 (a) A requirement that vendors build a prototype of the project
5 within a defined period of time and submit the working prototype to
6 the agency;

7 (b) A requirement that proposals adhere to coding and design best
8 practices;

9 (c) A requirement that software, including any prototype
10 submitted, is open source code;

11 (d) A limit for the number of vendors selected for a prequalified
12 vendor pool; and

13 (e) Any other criteria that the office and the department of
14 enterprise services deem are necessary.

15 **Sec. 4.** RCW 39.26.125 and 2012 c 224 s 14 are each amended to
16 read as follows:

17 All contracts must be entered into pursuant to competitive
18 solicitation, except for:

19 (1) Emergency contracts;

20 (2) Sole source contracts that comply with the provisions of RCW
21 39.26.140;

22 (3) Direct buy purchases, as designated by the director. The
23 director shall establish policies to define criteria for direct buy
24 purchases. These criteria may be adjusted to accommodate special
25 market conditions and to promote market diversity for the benefit of
26 the citizens of the state of Washington;

27 (4) Purchases involving special facilities, services, or market
28 conditions, in which instances of direct negotiation is in the best
29 interest of the state;

30 (5) Purchases from master contracts established by the department
31 or an agency authorized by the department;

32 (6) Client services contracts;

33 (7) Other specific contracts or classes or groups of contracts
34 exempted from the competitive solicitation process when the director
35 determines that a competitive solicitation process is not appropriate
36 or cost-effective;

37 (8) Off-contract purchases of Washington grown food when such
38 food is not available from Washington sources through an existing
39 contract. However, Washington grown food purchased under this

1 subsection must be of an equivalent or better quality than similar
2 food available through the contract and must be able to be paid from
3 the agency's existing budget. This requirement also applies to
4 purchases and contracts for purchases executed by state agencies,
5 including institutions of higher education as defined in RCW
6 28B.10.016, under delegated authority granted in accordance with this
7 chapter or under RCW 28B.10.029;

8 (9) Contracts awarded to companies that furnish a service where
9 the tariff is established by the utilities and transportation
10 commission or other public entity;

11 (10) Intergovernmental agreements awarded to any governmental
12 entity, whether federal, state, or local and any department,
13 division, or subdivision thereof;

14 (11) Contracts for services that are necessary to the conduct of
15 collaborative research if the use of a specific contractor is
16 mandated by the funding source as a condition of granting funds;

17 (12) Contracts for architectural and engineering services as
18 defined in RCW 39.80.020, which shall be entered into under chapter
19 39.80 RCW;

20 (13) Contracts for the employment of expert witnesses for the
21 purposes of litigation; (~~and~~)

22 (14) Contracts for bank supervision authorized under RCW
23 (~~(30.38.040)~~) 30A.38.040; and

24 (15) Contracts awarded pursuant to a solicitation for bid made to
25 a prequalified vendor pool under section 3 of this act.

26 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.105
27 RCW to read as follows:

28 The office shall establish policies for the procurement of
29 information technology systems pursuant to sections 2 and 3 of this
30 act to ensure the security of the infrastructure system contracted
31 for, and protection of the data and content stored, transacted, or
32 processed in the infrastructure system purchased.

33 **Sec. 6.** RCW 39.26.100 and 2018 c 253 s 4 are each amended to
34 read as follows:

35 (1) The provisions of this chapter do not apply in any manner to
36 the operation of the state legislature except as requested by the
37 legislature.

1 (2) Except for sections 2 and 3 of this act, the provisions of
2 this chapter do not apply to the contracting for services, equipment,
3 and activities that are necessary to establish, operate, or manage
4 the state data center, including architecture, design, engineering,
5 installation, and operation of the facility, that are approved by the
6 technology services board or the acquisition of proprietary software,
7 equipment, and information technology services necessary for or part
8 of the provision of services offered by the consolidated technology
9 services agency.

10 (3) Primary authority for the purchase of specialized equipment,
11 and instructional and research material, for their own use rests with
12 the institutions of higher education as defined in RCW 28B.10.016.

13 (4) Universities operating hospitals with approval from the
14 director, as the agent for state hospitals as defined in RCW
15 72.23.010, and for health care programs provided in state
16 correctional institutions as defined in RCW 72.65.010(3) and
17 veterans' institutions as defined in RCW 72.36.010 and 72.36.070, may
18 make purchases for hospital operation by participating in contracts
19 for materials, supplies, and equipment entered into by nonprofit
20 cooperative hospital group purchasing organizations if documented to
21 be more cost-effective.

22 (5) Primary authority for the purchase of materials, supplies,
23 and equipment, for resale to other than public agencies, rests with
24 the state agency concerned.

25 (6) The authority for the purchase of insurance and bonds rests
26 with the risk manager under RCW 43.19.769, except for institutions of
27 higher education that choose to exercise independent purchasing
28 authority under RCW 28B.10.029.

29 (7) The provisions of this chapter do not apply to information
30 technology purchases by state agencies, other than institutions of
31 higher education and agencies of the judicial branch, if (a) the
32 purchase is less than one hundred thousand dollars, (b) the initial
33 purchase is approved by the chief information officer of the state,
34 and (c) the agency director and the chief information officer of the
35 state jointly prepare a public document providing a detailed
36 justification for the expenditure.

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