

HB 1471 - S COMM AMD

By Committee on State Government & Elections

NOT CONSIDERED 05/17/2023

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 39.26.010 and 2022 c 71 s 12 are each amended to  
4 read as follows:

5 The definitions in this section apply throughout this chapter  
6 unless the context clearly requires otherwise.

7 (1) "Agency" means any state office or activity of the executive  
8 and judicial branches of state government, including state agencies,  
9 departments, offices, divisions, boards, commissions, institutions of  
10 higher education as defined in RCW 28B.10.016, and correctional and  
11 other types of institutions. "Agency" does not include a  
12 comprehensive cancer center participating in a collaborative  
13 arrangement as defined in RCW 28B.10.930 that is operated in  
14 conformance with RCW 28B.10.930.

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

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

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

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

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

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

14 (10) "Director" means the director of the department of  
15 enterprise services.

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

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

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

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

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

32 (16) "Microbusiness" 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 (~~one million~~  
36 ~~dollars~~) \$1,000,000 annually as reported on its federal tax return  
37 or on its return filed with the department of revenue.

38 (17) "Minibusines" means any business entity, including a sole  
39 proprietorship, corporation, partnership, or other legal entity,  
40 that: (a) Is owned and operated independently from all other

1 businesses; and (b) has a gross revenue of less than (~~three million~~  
2 ~~dollars~~) \$3,000,000, but (~~one million dollars~~) \$1,000,000 or more  
3 annually as reported on its federal tax return or on its return filed  
4 with the department of revenue.

5 (18) "Polychlorinated biphenyls" means any polychlorinated  
6 biphenyl congeners and homologs.

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

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

13 (21) "Services" means labor, work, analysis, or similar  
14 activities provided by a contractor to accomplish a specific scope of  
15 work.

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

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

21 (i) Fifty or fewer employees; or

22 (ii) A gross revenue of less than (~~seven million dollars~~)  
23 \$7,000,000 annually as reported on its federal income tax return or  
24 its return filed with the department of revenue over the previous  
25 three consecutive years; or

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

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

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

33 **Sec. 2.** RCW 39.26.070 and 2015 c 79 s 6 are each amended to read  
34 as follows:

35 A convenience contract is a contract for specific goods or  
36 services, or both, that is solicited and established in accordance  
37 with procurement laws and rules for use by (~~a specific agency or~~) a  
38 specified group of agencies (~~as needed from time to time~~). A  
39 convenience contract is not available for general use and (~~may~~

1 only)) must be (~~used as specified~~) approved by the department.  
2 Convenience contracts are not intended to replace or supersede master  
3 contracts as defined in this chapter.

4 **Sec. 3.** RCW 39.26.130 and 2012 c 224 s 15 are each amended to  
5 read as follows:

6 (1) An agency may make emergency purchases as defined in  
7 subsection (~~(3)~~) (4) of this section. When an emergency purchase is  
8 made, the agency head shall submit written notification of the  
9 purchase within (~~three~~) 10 business days of the purchase to the  
10 director. This notification must contain a description of the  
11 purchase, a description of the emergency and the circumstances  
12 leading up to the emergency, and an explanation of why the  
13 circumstances required an emergency purchase.

14 (2) Emergency contracts must be submitted to the department and  
15 made available for public inspection within (~~three working~~) 10  
16 business days following the commencement of work or execution of the  
17 contract, whichever occurs first.

18 (3) The department may authorize exceptions to this section due  
19 to exigent circumstances.

20 (4) As used in this section, "emergency" means a set of  
21 unforeseen circumstances beyond the control of the agency that  
22 either:

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

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

28 **Sec. 4.** RCW 39.26.140 and 2012 c 224 s 16 are each amended to  
29 read as follows:

30 (1) Agencies must submit sole source contracts to the department  
31 and make the contracts available for public inspection not (~~less~~)  
32 fewer than (~~ten~~) 15 working days before the proposed starting date  
33 of the contract. Agencies must provide documented justification for  
34 sole source contracts to the department when the contract is  
35 submitted, and must include evidence that the agency posted the  
36 contract opportunity at a minimum on the state's enterprise vendor  
37 registration and bid notification system.

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

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

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

11 **Sec. 5.** RCW 39.26.200 and 2020 c 269 s 3 are each amended to  
12 read as follows:

13 (1)(a) The director shall provide notice to the contractor of the  
14 director's intent to either fine or debar with the specific reason  
15 for either the fine or debarment. The department must establish the  
16 debarment and fining processes by rule.

17 (b) After reasonable notice to the contractor and reasonable  
18 opportunity for that contractor to be heard, the director has the  
19 authority to debar a contractor for cause from consideration for  
20 award of contracts. The debarment must be for a period of not more  
21 than three years.

22 (2) The director may either fine or debar a contractor based on a  
23 finding of one or more of the following causes:

24 (a) Conviction for commission of a criminal offense as an  
25 incident to obtaining or attempting to obtain a public or private  
26 contract or subcontract, or in the performance of such contract or  
27 subcontract;

28 (b) Conviction or a final determination in a civil action under  
29 state or federal statutes of fraud, embezzlement, theft, forgery,  
30 bribery, falsification or destruction of records, receiving stolen  
31 property, violation of the federal false claims act, 31 U.S.C. Sec.  
32 3729 et seq., or the state medicaid fraud false claims act, chapter  
33 74.66 RCW, or any other offense indicating a lack of business  
34 integrity or business honesty that currently, seriously, and directly  
35 affects responsibility as a state contractor;

36 (c) Conviction under state or federal antitrust statutes arising  
37 out of the submission of bids or proposals;

1 (d) Two or more violations within the previous five years of the  
2 national labor relations act as determined by the national labor  
3 relations board or court of competent jurisdiction;

4 (e) Violation of contract provisions, as set forth in this  
5 subsection, of a character that is regarded by the director to be so  
6 serious as to justify debarment action:

7 (i) Deliberate failure without good cause to perform in  
8 accordance with the specifications or within the time limit provided  
9 in the contract; or

10 (ii) A recent record of failure to perform or of unsatisfactory  
11 performance in accordance with the terms of one or more contracts,  
12 however the failure to perform or unsatisfactory performance caused  
13 by acts beyond the control of the contractor may not be considered to  
14 be a basis for debarment;

15 (f) Violation of ethical standards set forth in RCW 39.26.020;

16 (g) Any other cause the director determines to be so serious and  
17 compelling as to affect responsibility as a state contractor,  
18 including debarment by another governmental entity for any cause  
19 listed in regulations; and

20 (h) (~~During the 2017-2019 fiscal biennium, the~~) The failure to  
21 comply with a provision in a state master contract or other agreement  
22 with a state agency that requires equality among its workers by  
23 ensuring similarly employed individuals are compensated as equals.

24 (3) The director must issue a written decision to debar. The  
25 decision must:

26 (a) State the reasons for the action taken; and

27 (b) Inform the debarred contractor of the contractor's rights to  
28 judicial or administrative review."

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29 On page 1, line 3 of the title, after "contracts;" strike the  
30 remainder of the title and insert "and amending RCW 39.26.010,  
31 39.26.070, 39.26.130, 39.26.140, and 39.26.200."

EFFECT: Restores provisions regarding equal compensation, in-state preference, and reciprocity in bidding.

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