
State Government & Tribal Relations Committee

ESSB 5186

Brief Description: Requiring antidiscrimination clauses in public contracting.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Liias, Billig, Dhingra, Hunt, Keiser, Lovick, Nguyen, Nobles, Stanford, Valdez, Wellman and Wilson, C.).

Brief Summary of Engrossed Substitute Bill

- Requires that every state contract and subcontract for public works or for goods or services entered into on or after January 1, 2024, include a nondiscrimination clause.
- Requires the Department of Enterprise Services in collaboration with the Office of Minority and Women's Business Enterprises, the Office of Equity, and the Human Rights Commission to develop a standard template for public works and goods and services contracts that meets the requirements under the act.

Hearing Date: 3/22/23

Staff: Desiree Omli (786-7105).

Background:

State Goods and Services Contracts.

The Department of Enterprise Services (DES) establishes state policies, standards, and procedures regarding the procurement of goods and services by all state agencies and the judicial branch. The DES also has authority to enter into master contracts which is a statewide program

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to help governments and certain nonprofits buy goods and services through statewide contracts and cooperative purchasing agreements. All contracts subject to the statute regulating the procurement of goods and services must be entered into pursuant to competitive solicitation, with several enumerated exceptions. Any award of a contract must be to the lowest responsive and responsible bidder that meets specified criteria under procurement laws. Civil service laws require that when contracting out for services, agencies and institutions of higher education ensure firms adhere to the Washington Laws Against Discrimination (WLAD).

Public Works.

Public works projects include construction, building, renovation, remodeling, alteration, repair, or improvement of real property. Public works does not include ordinary maintenance or contracts relating to a stadium and exhibition center site that is under the jurisdiction of a public stadium authority. With some exceptions, public agencies are required to award public works contracts to the lowest responsive and responsible bidder. Alternative public works contracting procedures are available for design-build contracts, general contractor/construction manager contracts, and job order contracts where contracts are awarded primarily on qualifications, with some price consideration.

Other Contracting Information.

State agencies are encouraged to award 3 percent of all procurement contracts that are exempt from competitive bidding requirements to veteran-owned businesses. In addition, the Office of Minority and Women's Business Enterprises (OMWBE) is required to develop, plan, and implement programs to provide an opportunity for participation by qualified minority and women-owned and controlled businesses in public works contracts and the procurement of goods and services by state agencies and educational institutions. The Director of the OMWBE sets annual goals for the participation in state contracts by qualified minority-owned business enterprises and women-owned business enterprises. Each state agency and educational institution must comply with the annual goals established for that agency or institution for public works and procuring goods or services.

The Washington Law Against Discrimination.

The WLAD establishes a right to be free from discrimination based on race; color; creed; national origin; sexual orientation; sex; veteran or military status; the presence of any sensory, mental, or physical disability; or the use of a trained dog guide or service animal. This right applies to the following areas but is not limited to these areas: employment; places of public resort, accommodation, or amusement; commerce; and real estate, credit, insurance transactions, and engagement in commerce. The WLAD also prohibits the state from discriminating against, or granting preferential treatment to, any individual group on the basis of race, sex, color, ethnicity, or national origin in the operation of public contracting.

Summary of Bill:

Every state contract and subcontract for public works or for goods or services entered into on or after January 1, 2024, must include a nondiscrimination clause which prohibits any covered

contractor or subcontractor from discriminating on the basis of age, sex, marital status, sexual orientation, gender identity, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, disability, or the use of a service animal, in:

- hiring, unless based upon a bona fide occupational qualification;
- discharging or barring a person from employment;
- compensation;
- other terms or conditions of employment, except that employers may segregate washrooms or locker facilities on the basis of sex and in situations where the Human Rights Commission (Commission) finds that the employment practice is appropriate; and
- printing or circulating any statement, advertisement, or publication; using any form of application for employment; or making any inquiry in connection with prospective employment, which expresses any limitation, specification, or discrimination unless based upon a bona fide occupational qualification. Advertising in a foreign language is authorized.

Under the nondiscrimination clause, contractors and subcontractors must provide a written notice of their obligations under the clause to labor organizations with which they have a collective bargaining or other agreement. The DES in collaboration with the OMWBE, the Office of Equity, and the Commission must develop a standard template for public works and goods and services contracts that meets the requirements under the act.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.