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HOUSE BILL 1143

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State of Washington

63rd Legislature

2013 Regular Session

By Representatives Dahlquist, Hurst, and Buys

Read first time 01/16/13. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to providing accountability to procurement policy;  
2 amending RCW 39.26.020, 39.26.050, 39.26.080, 39.26.090, 39.26.125,  
3 39.26.140, and 43.19.011; and reenacting and amending RCW 39.26.010.

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

5 **Sec. 1.** RCW 39.26.010 and 2012 c 224 s 2 are each reenacted and  
6 amended to read as follows:

7 The definitions in this section apply throughout this chapter  
8 unless the context clearly requires otherwise.

9 (1) "Agency" means any state office or activity of the executive  
10 and judicial branches of state government, including state agencies,  
11 departments, offices, divisions, boards, commissions, institutions of  
12 higher education as defined in RCW 28B.10.016, and correctional and  
13 other types of institutions.

14 (2) "Bid" means an offer, proposal, or quote for goods or services  
15 in response to a solicitation issued for such goods or services by the  
16 department or an agency of Washington state government.

17 (3) "Bidder" means an individual or entity who submits a bid,  
18 quotation, or proposal in response to a solicitation issued for such

1 goods or services by the department or an agency of Washington state  
2 government.

3 (4) "Businesses owned and operated by persons with disabilities"  
4 means any for-profit business certified under chapter 39.19 RCW as  
5 being owned and controlled by persons who have been either:

6 (a) Determined by the department of social and health services to  
7 have a developmental disability, as defined in RCW 71A.10.020;

8 (b) Determined by an agency established under Title I of the  
9 federal vocational rehabilitation act to be or have been eligible for  
10 vocational rehabilitation services;

11 (c) Determined by the federal social security administration to be  
12 or have been eligible for either social security disability insurance  
13 or supplemental security income; or

14 (d) Determined by the United States department of veterans affairs  
15 to be or have been eligible for vocational rehabilitation services due  
16 to service-connected disabilities, under 38 U.S.C. Sec. 3100 et seq.

17 (5) "Client services" means services provided directly to agency  
18 clients including, but not limited to, medical and dental services,  
19 employment and training programs, residential care, and subsidized  
20 housing.

21 (6) "Community rehabilitation program of the department of social  
22 and health services" means any entity that:

23 (a) Is registered as a nonprofit corporation with the secretary of  
24 state; and

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

28 (7) "Competitive solicitation" means a documented formal process  
29 providing an equal and open opportunity to bidders and culminating in  
30 a selection based on predetermined criteria.

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

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

37 (10) "Department" means the department of enterprise services.

1 (11) "Director" means the director of the department of enterprise  
2 services.

3 (12) "Estimated useful life" of an item means the estimated time  
4 from the date of acquisition to the date of replacement or disposal,  
5 determined in any reasonable manner.

6 (13) "Goods" means products, materials, supplies, or equipment  
7 provided by a contractor.

8 (14) "In-state business" means a business that has its principal  
9 office located in Washington.

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

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

19 (17) "Microbusiness" means any business entity, including a sole  
20 proprietorship, corporation, partnership, or other legal entity, that:  
21 (a) Is owned and operated independently from all other businesses; and  
22 (b) has a gross revenue of less than one million dollars annually as  
23 reported on its federal tax return or on its return filed with the  
24 department of revenue.

25 (18) "Minibusiness" means any business entity, including a sole  
26 proprietorship, corporation, partnership, or other legal entity, that:  
27 (a) Is owned and operated independently from all other businesses; and  
28 (b) has a gross revenue of less than three million dollars, but one  
29 million dollars or more annually as reported on its federal tax return  
30 or on its return filed with the department of revenue.

31 (19) "Public agency" means any agency, political subdivision, or  
32 unit of local government of this state including, but not limited to,  
33 municipal corporations, quasi-municipal corporations, special purpose  
34 districts, and local service districts; any agency of the state  
35 government; any agency of the United States; and any Indian tribe  
36 recognized by the federal government.

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

1        ~~((+20))~~ (21) "Services" means labor, work, analysis, or similar  
2 activities provided by a contractor to accomplish a specific scope of  
3 work.

4        ~~((+21))~~ (22) "Small business" means an in-state business,  
5 including a sole proprietorship, corporation, partnership, or other  
6 legal entity, that:

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

9        (i) Fifty or fewer employees; or

10        (ii) A gross revenue of less than seven million dollars annually as  
11 reported on its federal income tax return or its return filed with the  
12 department of revenue over the previous three consecutive years; or

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

15        ~~((+22))~~ (23) "Sole source" means a contractor providing goods or  
16 services of such a unique nature or sole availability at the location  
17 required that the contractor is clearly and justifiably the only  
18 practicable source to provide the goods or services.

19        ~~((+23))~~ (24) "Washington grown" has the definition in RCW  
20 15.64.060.

21        **Sec. 2.** RCW 39.26.020 and 2012 c 224 s 3 are each amended to read  
22 as follows:

23        (1)(a) A state officer or employee of an agency who seeks to  
24 acquire goods or services or who participates in those contractual  
25 matters is subject to the requirements in RCW 42.52.150.

26        (b) A contractor who contracts with an agency to perform services  
27 related to the acquisition of goods and services for or on behalf of  
28 the state is subject to the requirements in RCW 42.52.150.

29        (2) No person or entity who seeks or may seek a contract with a  
30 state agency may give, loan, transfer, or deliver to any person  
31 something of economic value for which receipt of such item would cause  
32 a state officer or employee to be in a violation of RCW 42.52.040,  
33 42.52.110, 42.52.120, 42.52.140, or 42.52.150.

34        (3) State policy is that existing procurement contracts must not be  
35 terminated early so that a public agency may use a state master  
36 contract or state sole source contract under this chapter unless

1 sufficient savings and efficiencies are expected to outweigh the costs  
2 and risks associated with early termination.

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

5 (1) In addition to the powers and duties provided in chapter 43.19  
6 RCW, the department shall make available goods and services to support  
7 state agencies, and may enter into agreements with any other local or  
8 federal governmental agency or entity or a public benefit nonprofit  
9 organization, in compliance with RCW 39.34.055, and any tribes located  
10 in the state, to furnish such products and services as deemed  
11 appropriate by both parties.

12 (2) The department shall ensure full cost recovery from state  
13 agencies, other local or federal governmental agency or entity, public  
14 benefit nonprofit organizations, or any tribes located in the state,  
15 for activities performed pursuant to subsection (1) of this section.  
16 Cost recovery must ensure that the department is reimbursed its full  
17 cost for providing the goods and services furnished as determined by  
18 the department. Cost recovery may be collected through the state  
19 agency, other governmental entity, nonprofit organization, or through  
20 the contractor.

21 (3) All governmental entities of this state may enter into  
22 agreements under this section with the department, unless otherwise  
23 prohibited.

24 (4) Any public agency choosing to make purchases pursuant to a  
25 contract issued under this section may not terminate an existing  
26 contract with a different business early in order to use the new  
27 contract unless savings or efficiencies clearly demonstrate that the  
28 taxpayers will receive a benefit under the new contract.

29 **Sec. 4.** RCW 39.26.080 and 2012 c 224 s 9 are each amended to read  
30 as follows:

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

1 efficiency in procurement. The policies, standards, and procedures  
2 should discourage public agencies from terminating existing contracts  
3 in order to use a state sole source contract, a state goods and  
4 services contract, or a state master contract unless the public agency  
5 can clearly demonstrate expected savings and efficiencies that outweigh  
6 the cost and risk of early termination.

7 (2) The director is authorized to adopt rules, policies, and  
8 guidelines governing the procurement, contracting, and contract  
9 management of any and all goods and services procured by state agencies  
10 under this chapter.

11 (3) The director or designee is the sole authority to enter into  
12 master contracts on behalf of the state. The governor has the  
13 authority to terminate any state contract in accordance with state law,  
14 federal law, or contractual provisions.

15 **Sec. 5.** RCW 39.26.090 and 2012 c 224 s 10 are each amended to read  
16 as follows:

17 The director shall:

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

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

22 (3) Establish procurement processes for information technology  
23 goods and services, using technology standards and policies established  
24 by the office of the chief information officer under chapter 43.41A  
25 RCW;

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

31 (5) Have authority to delegate to agencies authorization to  
32 purchase goods and services. The authorization must specify  
33 restrictions as to dollar amount or to specific types of goods and  
34 services, based on a risk assessment process developed by the  
35 department. Acceptance of the purchasing authorization by an agency  
36 does not relieve the agency from conformance with this chapter or from  
37 policies established by the director. Also, the director may not

1 delegate to a state agency the authorization to purchase goods and  
2 services if the agency is not in substantial compliance with overall  
3 procurement policies as established by the director;

4 (6) Develop procurement policies and procedures, such as unbundled  
5 contracting and subcontracting, that encourage and facilitate the  
6 purchase of goods and services from Washington small businesses,  
7 microbusinesses, and minibusinesses, and minority and women-owned  
8 businesses to the maximum extent practicable and consistent with  
9 international trade agreement commitments;

10 (7) Develop and implement an enterprise system for electronic  
11 procurement;

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

14 (9) Establish overall state policy for compliance by all agencies  
15 regarding:

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

20 (b) Policies requiring all food contracts to include a plan to  
21 maximize to the extent practicable and consistent with international  
22 trade agreement commitments the availability of Washington grown food  
23 purchased through the contract;

24 (10) Develop guidelines and criteria for the purchase of vehicles,  
25 high gas mileage vehicles, and alternate vehicle fuels and systems,  
26 equipment, and materials, that reduce overall energy-related costs and  
27 energy use by the state, including investigations into all  
28 opportunities to aggregate the purchasing of clean technologies by  
29 state and local governments, and including the requirement that new  
30 passenger vehicles purchased by the state meet the minimum standards  
31 for passenger automobile fuel economy established by the United States  
32 secretary of transportation pursuant to the energy policy and  
33 conservation act (15 U.S.C. Sec. 2002); (~~and~~)

34 (11) Develop and enact rules to implement the provisions of this  
35 chapter;

36 (12) Limit contracts for services and goods to terms no more than  
37 three years with all potential extensions not to exceed ten years; and

1       (13) Develop a process whereby the department uses price quotes  
2 from local businesses to determine current prices and labor rates prior  
3 to granting contractual increases. Findings must be posted publicly  
4 ten days prior to the department authorizing any contractual increase.  
5 Only with the governor's approval may a contract be increased in  
6 amounts exceeding the estimated real gross domestic product growth rate  
7 for the year as forecast by the Washington state economic and revenue  
8 forecast council.

9       **Sec. 6.** RCW 39.26.125 and 2012 c 224 s 14 are each amended to read  
10 as follows:

11       All contracts must be entered into pursuant to competitive  
12 solicitation, except for:

13       (1) Emergency contracts;

14       (2) ~~((Sole source contracts that comply with the provisions of RCW~~  
15 ~~39.26.140;~~

16       ~~(3))~~ Direct buy purchases, as designated by the director. The  
17 director shall establish policies to define criteria for direct buy  
18 purchases. These criteria may be adjusted to accommodate special  
19 market conditions and to promote market diversity for the benefit of  
20 the citizens of the state of Washington;

21       ~~((4))~~ (3) Purchases involving special facilities, services, or  
22 market conditions, in which instances of direct negotiation is in the  
23 best interest of the state;

24       ~~((5))~~ (4) Purchases from master contracts established by the  
25 department or an agency authorized by the department;

26       ~~((6))~~ (5) Client services contracts;

27       ~~((7))~~ (6) Other specific contracts or classes or groups of  
28 contracts exempted from the competitive solicitation process when the  
29 director determines that a competitive solicitation process is not  
30 appropriate or cost-effective;

31       ~~((8))~~ (7) Off-contract purchases of Washington grown food when  
32 such food is not available from Washington sources through an existing  
33 contract. However, Washington grown food purchased under this  
34 subsection must be of an equivalent or better quality than similar food  
35 available through the contract and must be able to be paid from the  
36 agency's existing budget. This requirement also applies to purchases  
37 and contracts for purchases executed by state agencies, including



1 institutions of higher education as defined in RCW 28B.10.016, under  
2 delegated authority granted in accordance with this chapter or under  
3 RCW 28B.10.029;

4 ~~((+9))~~ (8) Contracts awarded to companies that furnish a service  
5 where the tariff is established by the utilities and transportation  
6 commission or other public entity;

7 ~~((+10))~~ (9) Intergovernmental agreements awarded to any  
8 governmental entity, whether federal, state, or local and any  
9 department, division, or subdivision thereof;

10 ~~((+11))~~ (10) Contracts for services that are necessary to the  
11 conduct of collaborative research if the use of a specific contractor  
12 is mandated by the funding source as a condition of granting funds;

13 ~~((+12))~~ (11) Contracts for architectural and engineering services  
14 as defined in RCW 39.80.020, which shall be entered into under chapter  
15 39.80 RCW;

16 ~~((+13))~~ (12) Contracts for the employment of expert witnesses for  
17 the purposes of litigation; and

18 ~~((+14))~~ (13) Contracts for bank supervision authorized under RCW  
19 30.38.040.

20 **Sec. 7.** RCW 39.26.140 and 2012 c 224 s 16 are each amended to read  
21 as follows:

22 (1) Agencies must submit sole source contracts to the department  
23 and make the contracts available for public inspection not less than  
24 ten working days before the proposed starting date of the contract.  
25 Agencies must provide documented justification for sole source  
26 contracts to the department when the contract is submitted, and must  
27 include evidence that the agency posted the contract opportunity at a  
28 minimum on the state's enterprise vendor registration and bid  
29 notification system.

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

35 (3) The director may provide an agency an exemption from the  
36 requirements of this section for a contract or contracts. Requests for  
37 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 (5) Sole source contracts for goods and services may not have a  
4 contractual term of more than three years with all potential extensions  
5 not to exceed ten years.

6 (6) Any public agency choosing to make purchases pursuant to a  
7 contract issued under this section may not terminate an existing  
8 contract with a different business early in order to use the new  
9 contract unless savings or efficiencies clearly demonstrate that the  
10 taxpayers will receive a benefit under the new contract.

11 **Sec. 8.** RCW 43.19.011 and 2011 1st sp.s. c 43 s 201 are each  
12 amended to read as follows:

13 (1) The director of enterprise services shall supervise and  
14 administer the activities of the department of enterprise services and  
15 shall advise the governor and the legislature with respect to matters  
16 under the jurisdiction of the department.

17 (2) In addition to other powers and duties granted to the director,  
18 the director shall have the following powers and duties:

19 (a) Enter into contracts on behalf of the state to carry out the  
20 purposes of this chapter;

21 (b) Accept and expend gifts and grants that are related to the  
22 purposes of this chapter, whether such grants be of federal or other  
23 funds;

24 (c) Appoint deputy and assistant directors and such other special  
25 assistants as may be needed to administer the department. These  
26 employees are exempt from the provisions of chapter 41.06 RCW;

27 (d) Adopt rules in accordance with chapter 34.05 RCW and perform  
28 all other functions necessary and proper to carry out the purposes of  
29 this chapter;

30 (e) Delegate powers, duties, and functions as the director deems  
31 necessary for efficient administration, but the director shall be  
32 responsible for the official acts of the officers and employees of the  
33 department;

34 (f) Apply for grants from public and private entities, and receive  
35 and administer any grant funding received for the purpose and intent of  
36 this chapter; ((and))

1       (g) Adopt policies, contractual provisions, or guidance to prevent  
2 early termination of existing contracts by public agencies choosing to  
3 use state contracts; and

4       (h) Perform other duties as are necessary and consistent with law.

5       (3) The director may establish additional advisory groups as may be  
6 necessary to carry out the purposes of this chapter.

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