

CERTIFICATION OF ENROLLMENT

SECOND SUBSTITUTE HOUSE BILL 2452

Chapter 224, Laws of 2012

62nd Legislature
2012 Regular Session

STATE PROCUREMENT OF GOODS AND SERVICES

EFFECTIVE DATE: 01/01/13

Passed by the House March 6, 2012
Yeas 60 Nays 37

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 2, 2012
Yeas 39 Nays 10

BRAD OWEN

President of the Senate

Approved March 30, 2012, 11:46 a.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 2452** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

March 30, 2012

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 2452

AS AMENDED BY THE SENATE

Passed Legislature - 2012 Regular Session

State of Washington 62nd Legislature 2012 Regular Session

By House Ways & Means (originally sponsored by Representatives Wylie, Alexander, Kenney, Haigh, Hunt, Hudgins, Harris, McCoy, Ryu, Hasegawa, Springer, Billig, Maxwell, Upthegrove, and Ormsby; by request of Department of Enterprise Services)

READ FIRST TIME 02/07/12.

1 AN ACT Relating to centralizing the authority and responsibility
2 for the development, process, and oversight of state procurement of
3 goods and services; amending RCW 43.19.005, 43.19.725, and 43.19.727;
4 adding a new chapter to Title 39 RCW; recodifying RCW 43.19.1932,
5 43.19.530, 43.19.534, 43.19.535, 43.19.536, 43.19.538, 43.19.539,
6 43.19.700, 43.19.702, 43.19.704, 43.19.797, and 39.29.052; repealing
7 RCW 39.29.003, 39.29.006, 39.29.008, 39.29.009, 39.29.011, 39.29.016,
8 39.29.018, 39.29.020, 39.29.025, 39.29.040, 39.29.050, 39.29.055,
9 39.29.065, 39.29.068, 39.29.075, 39.29.080, 39.29.090, 39.29.100,
10 39.29.110, 39.29.120, 39.29.130, 39.29.900, 43.19.180, 43.19.185,
11 43.19.190, 43.19.1901, 43.19.1905, 43.19.19052, 43.19.1906, 43.19.1908,
12 43.19.1911, 43.19.1913, 43.19.1914, 43.19.1915, 43.19.1937, 43.19.1939,
13 and 43.19.200; and providing an effective date.

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

15 NEW SECTION. **Sec. 1.** INTENT. It is the intent of this chapter to
16 promote open competition and transparency for all contracts for goods
17 and services entered into by state agencies, unless specifically
18 exempted under this chapter. It is further the intent of this chapter
19 to centralize within one agency the authority and responsibility for

1 the development and oversight of policies related to state procurement
2 and contracting. To ensure the highest ethical standards, proper
3 accounting for contract expenditures, and for ease of public review, it
4 is further the intent to centralize the location of information about
5 state procurements and contracts. It is also the intent of the
6 legislature to provide state agency contract data to the public in a
7 searchable manner.

8 In addition, the legislature intends that the state develop
9 procurement policies, procedures, and materials that encourage and
10 facilitate state agency purchase of goods and services from Washington
11 small businesses.

12 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
13 section apply throughout this chapter unless the context clearly
14 requires otherwise.

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

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

23 (3) "Bidder" means an individual or entity who submits a bid,
24 quotation, or proposal in response to a solicitation issued for such
25 goods or services by the department or an agency of Washington state
26 government.

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

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

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

35 (c) Determined by the federal social security administration to be
36 or have been eligible for either social security disability insurance
37 or supplemental security income; or

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

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

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

10 (a) Is registered as a nonprofit corporation with the secretary of
11 state; and

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

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

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

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

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

25 (11) "Director" means the director of the department of enterprise
26 services.

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

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

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

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

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

5 (17) "Purchase" means the acquisition of goods or services,
6 including the leasing or renting of goods.

7 (18) "Services" means labor, work, analysis, or similar activities
8 provided by a contractor to accomplish a specific scope of work.

9 (19) "Small business" means an in-state business, including a sole
10 proprietorship, corporation, partnership, or other legal entity, that:

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

13 (i) Fifty or fewer employees; or

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

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

19 (20) "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 (21) "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 (22) "Sole source" means a contractor providing goods or services
32 of such a unique nature or sole availability at the location required
33 that the contractor is clearly and justifiably the only practicable
34 source to provide the goods or services.

35 (23) "Washington grown" has the definition in RCW 15.64.060.

36 NEW SECTION. **Sec. 3.** ETHICS IN PUBLIC CONTRACTING. (1)(a) A

1 state officer or employee of an agency who seeks to acquire goods or
2 services or who participates in those contractual matters is subject to
3 the requirements in RCW 42.52.150.

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

7 (2) No person or entity who seeks or may seek a contract with a
8 state agency may give, loan, transfer, or deliver to any person
9 something of economic value for which receipt of such item would cause
10 a state officer or employee to be in a violation of RCW 42.52.040,
11 42.52.110, 42.52.120, 42.52.140, or 42.52.150.

12 NEW SECTION. **Sec. 4.** RELEASE OF BID DOCUMENTS. (1) Records
13 related to state procurements are public records subject to disclosure
14 to the extent provided in chapter 42.56 RCW except as provided in
15 subsection (2) of this section.

16 (2) Bid submissions and bid evaluations are exempt from disclosure
17 until the agency announces the apparent successful bidder.

18 NEW SECTION. **Sec. 5.** PROHIBITION ON CERTAIN CONTRACTS. Agencies
19 that are authorized or directed to establish a board, commission,
20 council, committee, or other similar group made up of volunteers to
21 advise the activities and management of the agency are prohibited from
22 entering into contracts with any or all volunteer members as a means to
23 reimburse or otherwise pay members of such board, commission, council,
24 committee, or other similar group for the work performed as part of the
25 entity, except where payment is specifically authorized by statute.

26 NEW SECTION. **Sec. 6.** PROVISION OF GOODS AND SERVICES. (1) In
27 addition to the powers and duties provided in chapter 43.19 RCW, the
28 department shall make available goods and services to support state
29 agencies, and may enter into agreements with any other local or federal
30 governmental agency or entity or a public benefit nonprofit
31 organization, in compliance with RCW 39.34.055, and any tribes located
32 in the state, to furnish such products and services as deemed
33 appropriate by both parties.

34 (2) The department shall ensure full cost recovery from state
35 agencies, other local or federal governmental agency or entity, public

1 benefit nonprofit organizations, or any tribes located in the state,
2 for activities performed pursuant to subsection (1) of this section.
3 Cost recovery must ensure that the department is reimbursed its full
4 cost for providing the goods and services furnished as determined by
5 the department. Cost recovery may be collected through the state
6 agency, other governmental entity, nonprofit organization, or through
7 the contractor.

8 (3) All governmental entities of this state may enter into
9 agreements under this section with the department, unless otherwise
10 prohibited.

11 NEW SECTION. **Sec. 7.** COOPERATIVE PURCHASING AUTHORIZED. (1) On
12 behalf of the state, the department may participate in, sponsor,
13 conduct, or administer a cooperative purchasing agreement for the
14 procurement of any goods or services with one or more states, state
15 agencies, local governments, local government agencies, federal
16 agencies, or tribes located in the state, in accordance with an
17 agreement entered into between the participants. The cooperative
18 purchasing may include, but is not limited to, joint or multiparty
19 contracts between the entities, and master contracts or convenience
20 contracts that are made available to other public agencies.

21 (2) All cooperative purchasing conducted under this chapter must be
22 through contracts awarded through a competitive solicitation process.

23 NEW SECTION. **Sec. 8.** CONVENIENCE CONTRACT. A convenience
24 contract is a contract for specific goods or services, or both, that is
25 solicited and established by the department in accordance with
26 procurement laws and rules on behalf of and for use by a specific
27 agency or group of agencies as needed from time to time. A convenience
28 contract is not available for general use and may only be used as
29 specified by the department.

30 NEW SECTION. **Sec. 9.** PROCUREMENT AGENCY. (1) The director is
31 responsible for the development and oversight of policy for the
32 procurement of goods and services by all state agencies under this
33 chapter. When establishing policies, standards, and procedures, the
34 director shall account for differentiation in procurement practices and

1 needs among state agencies and strive to establish policies, standards,
2 and procedures that promote greater efficiency in procurement.

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

7 (3) The director or designee is the sole authority to enter into
8 master contracts on behalf of the state.

9 NEW SECTION. **Sec. 10.** DIRECTOR'S DUTIES AND RESPONSIBILITIES
10 REGARDING PROCUREMENT. The director shall:

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

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

15 (3) Establish procurement processes for information technology
16 goods and services, using technology standards and policies established
17 by the office of the chief information officer under chapter 43.41A
18 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 needed
22 for the support, maintenance, and use of all state agencies, except as
23 provided in section 11 of this act;

24 (5) Have authority to delegate to agencies authorization to
25 purchase goods and services. The authorization must specify
26 restrictions as to dollar amount or to specific types of goods and
27 services, based on a risk assessment process developed by the
28 department. Acceptance of the purchasing authorization by an agency
29 does not relieve the agency from conformance with this chapter or from
30 policies established by the director. Also, the director may not
31 delegate to a state agency the authorization to purchase goods and
32 services if the agency is not in substantial compliance with overall
33 procurement policies as established by the director;

34 (6) Develop procurement policies and procedures, such as unbundled
35 contracting and subcontracting, that encourage and facilitate the
36 purchase of goods and services from Washington small businesses,

1 microbusinesses, and minibusinesses, and minority and women-owned
2 businesses to the maximum extent practicable and consistent with
3 international trade agreement commitments;

4 (7) Develop and implement an enterprise system for electronic
5 procurement;

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

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

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

14 (b) Policies requiring all food contracts to include a plan to
15 maximize to the extent practicable and consistent with international
16 trade agreement commitments the availability of Washington grown food
17 purchased through the contract;

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

28 (11) Develop and enact rules to implement the provisions of this
29 chapter.

30 NEW __ SECTION. **Sec. 11.** EXEMPTIONS FROM CHAPTER. (1) The
31 provisions of this chapter do not apply in any manner to the operation
32 of the state legislature except as requested by the legislature.

33 (2) The provisions of this chapter do not apply to the contracting
34 for services and activities that are necessary to establish, operate,
35 or manage the state data center, including architecture, design,
36 engineering, installation, and operation of the facility, that are
37 approved by the technology services board or the acquisition of

1 proprietary software and information technology services necessary for
2 or part of the provision of services offered by the consolidated
3 technology services agency.

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

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

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

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

22 (7) The authority to purchase interpreter services and interpreter
23 brokerage services on behalf of limited-English speaking or sensory-
24 impaired applicants and recipients of public assistance rests with the
25 department of social and health services and the health care authority.

26 NEW SECTION. **Sec. 12.** TRAINING. (1) The department must provide
27 expertise and training on best practices for state procurement.

28 (2) The department must establish either training or certification
29 programs, or both, to ensure consistency in procurement practices for
30 employees authorized to perform procurement functions under the
31 provisions of this chapter. When establishing training or
32 certification programs, the department may approve existing training or
33 certification programs at state agencies. When establishing programs
34 or approving existing programs, the department shall work with agencies
35 with existing training programs to ensure coordination and minimize
36 additional costs associated with training requirements.

1 (3) Beginning July 1, 2013, state agencies must require agency
2 employees responsible for developing, executing, or managing
3 procurements or contracts, or both, to complete department-approved
4 training or certification programs, or both. Beginning July 1, 2015,
5 no agency employee may execute or manage contracts unless the employee
6 has met the training or certification requirements or both as set by
7 the department. Any request for exception to this requirement must be
8 submitted to the director for approval before the employee or group of
9 employees executes or manages contracts.

10 NEW SECTION. **Sec. 13.** COMPETITIVE SOLICITATION. (1) Insofar as
11 practicable, all purchases of or contracts for goods and services must
12 be based on a competitive solicitation process. This process may
13 include electronic or web-based solicitations, bids, and signatures.
14 This requirement also applies to procurement of goods and services
15 executed by agencies under delegated authority granted in accordance
16 with section 10 of this act or under RCW 28B.10.029.

17 (2) Subsection (1) of this section applies to contract amendments
18 that substantially change the scope of work of the original contract or
19 substantially increase the value of the original contract.

20 NEW SECTION. **Sec. 14.** COMPETITIVE SOLICITATION--EXCEPTIONS. All
21 contracts must be entered into pursuant to competitive solicitation,
22 except for:

23 (1) Emergency contracts;

24 (2) Sole source contracts that comply with the provisions of
25 section 16 of this act;

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

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

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

36 (6) Client services contracts;

1 (7) Other specific contracts or classes or groups of contracts
2 exempted from the competitive solicitation process when the director
3 determines that a competitive solicitation process is not appropriate
4 or cost-effective;

5 (8) Off-contract purchases of Washington grown food when such food
6 is not available from Washington sources through an existing contract.
7 However, Washington grown food purchased under this subsection must be
8 of an equivalent or better quality than similar food available through
9 the contract and must be able to be paid from the agency's existing
10 budget. This requirement also applies to purchases and contracts for
11 purchases executed by state agencies, including institutions of higher
12 education as defined in RCW 28B.10.016, under delegated authority
13 granted in accordance with this chapter or under RCW 28B.10.029;

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

17 (10) Intergovernmental agreements awarded to any governmental
18 entity, whether federal, state, or local and any department, division,
19 or subdivision thereof;

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

23 (12) Contracts for architectural and engineering services as
24 defined in RCW 39.80.020, which shall be entered into under chapter
25 39.80 RCW;

26 (13) Contracts for the employment of expert witnesses for the
27 purposes of litigation; and

28 (14) Contracts for bank supervision authorized under RCW 30.38.040.

29 NEW SECTION. **Sec. 15.** EMERGENCY PURCHASES. (1) An agency may
30 make emergency purchases as defined in subsection (3) of this section.
31 When an emergency purchase is made, the agency head shall submit
32 written notification of the purchase within three business days of the
33 purchase to the director. This notification must contain a description
34 of the purchase, a description of the emergency and the circumstances
35 leading up to the emergency, and an explanation of why the
36 circumstances required an emergency purchase.

1 (2) Emergency contracts must be submitted to the department and
2 made available for public inspection within three working days
3 following the commencement of work or execution of the contract,
4 whichever occurs first.

5 (3) As used in this section, "emergency" means a set of unforeseen
6 circumstances beyond the control of the agency that either:

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

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

12 NEW SECTION. **Sec. 16.** SOLE SOURCE CONTRACTS. (1) Agencies must
13 submit sole source contracts to the department and make the contracts
14 available for public inspection not less than ten working days before
15 the proposed starting date of the contract. Agencies must provide
16 documented justification for sole source contracts to the department
17 when the contract is submitted, and must include evidence that the
18 agency posted the contract opportunity at a minimum on the state's
19 enterprise vendor registration and bid notification system.

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

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

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

30 NEW SECTION. **Sec. 17.** NOTIFICATIONS. (1) Agencies must provide
31 public notice for all competitive solicitations. Agencies must post
32 all contract opportunities on the state's enterprise vendor
33 registration and bid notification system. In addition, agencies may
34 notify contractors and potential bidders by sending notices by mail,
35 electronic transmission, newspaper advertisements, or other means as
36 may be appropriate.

1 (2) Agencies should try to anticipate changes in a requirement
2 before the bid submittal date and to provide reasonable notice to all
3 prospective bidders of any resulting modification or cancellation. If,
4 in the opinion of the agency, it is not possible to provide reasonable
5 notice, the submittal date for receipt of bids may be postponed and all
6 bidders notified.

7 NEW SECTION. **Sec. 18.** AWARD. (1)(a) After bids that are
8 submitted in response to a competitive solicitation process are
9 reviewed by the awarding agency, the awarding agency may:

10 (i) Reject all bids and rebid or cancel the competitive
11 solicitation;

12 (ii) Request best and final offers from responsive and responsible
13 bidders; or

14 (iii) Award the purchase or contract to the lowest responsive and
15 responsible bidder.

16 (b) The agency may award one or more contracts from a competitive
17 solicitation.

18 (2) In determining whether the bidder is a responsible bidder, the
19 agency must consider the following elements:

20 (a) The ability, capacity, and skill of the bidder to perform the
21 contract or provide the service required;

22 (b) The character, integrity, reputation, judgment, experience, and
23 efficiency of the bidder;

24 (c) Whether the bidder can perform the contract within the time
25 specified;

26 (d) The quality of performance of previous contracts or services;

27 (e) The previous and existing compliance by the bidder with laws
28 relating to the contract or services; and

29 (f) Such other information as may be secured having a bearing on
30 the decision to award the contract.

31 (3) In determining the lowest responsive and responsible bidder, an
32 agency may consider best value criteria, including but not limited to:

33 (a) Whether the bid satisfies the needs of the state as specified
34 in the solicitation documents;

35 (b) Whether the bid encourages diverse contractor participation;

36 (c) Whether the bid provides competitive pricing, economies, and
37 efficiencies;

1 (d) Whether the bid considers human health and environmental
2 impacts;

3 (e) Whether the bid appropriately weighs cost and noncost
4 considerations; and

5 (f) Life-cycle cost.

6 (4) The solicitation document must clearly set forth the
7 requirements and criteria that the agency will apply in evaluating bid
8 submissions.

9 (5) The awarding agency may at its discretion reject the bid of any
10 contractor who has failed to perform satisfactorily on a previous
11 contract with the state.

12 (6) After reviewing all bid submissions, an agency may enter into
13 negotiations with the lowest responsive and responsible bidder in order
14 to determine if the bid may be improved. An agency may not use this
15 negotiation opportunity to permit a bidder to change a nonresponsive
16 bid into a responsive bid.

17 (7) The procuring agency must enter into the state's enterprise
18 vendor and bid notification system the name of each bidder and an
19 indication as to the successful bidder.

20 NEW SECTION. **Sec. 19.** COMPLAINT AND PROTEST PROCESS. (1) All
21 agencies that have original or delegated procurement authority for
22 goods or services must have a clear and transparent complaint process.
23 The complaint process must provide for the complaint to be submitted
24 and response provided before the deadline for bid submissions.

25 (2) All agencies that have original or delegated procurement
26 authority for goods or services must have a clear and transparent
27 protest process. The protest process must include a protest period
28 after the apparent successful bidder is announced but before the
29 contract is signed.

30 (3) The director may grant authority for an agency to sign a
31 contract before the protest process is completed due to exigent
32 circumstances.

33 NEW SECTION. **Sec. 20.** PROCUREMENT MANAGEMENT. (1) The department
34 must adopt uniform policies and procedures for the effective and
35 efficient management of contracts by all state agencies. The policies
36 and procedures must, at a minimum, include:

1 (a) Precontract procedures for selecting potential contractors
2 based on their qualifications and ability to perform;

3 (b) Model complaint and protest procedures;

4 (c) Alternative dispute resolution processes;

5 (d) Incorporation of performance measures and measurable benchmarks
6 in contracts;

7 (e) Model contract terms to ensure contract performance and
8 compliance with state and federal standards;

9 (f) Executing contracts using electronic signatures;

10 (g) Criteria for contract amendments;

11 (h) Postcontract procedures;

12 (i) Procedures and criteria for terminating contracts for cause or
13 otherwise; and

14 (j) Any other subject related to effective and efficient contract
15 management.

16 (2) An agency may not enter into a contract under which the
17 contractor could charge additional costs to the agency, the department,
18 the joint legislative audit and review committee, or the state auditor
19 for access to data generated under the contract. A contractor under
20 such a contract must provide access to data generated under the
21 contract to the contracting agency, the joint legislative audit and
22 review committee, and the state auditor.

23 (3) To the extent practicable, agencies should enter into
24 performance-based contracts. Performance-based contracts identify
25 expected deliverables and performance measures or outcomes.
26 Performance-based contracts also use appropriate techniques, which may
27 include but are not limited to, either consequences or incentives or
28 both to ensure that agreed upon value to the state is received.
29 Payment for goods and services under performance-based contracts should
30 be contingent on the contractor achieving performance outcomes.

31 (4) An agency and contractor may execute a contract using
32 electronic signatures.

33 (5) As used in subsection (2) of this section, "data" includes all
34 information that supports the findings, conclusions, and
35 recommendations of the contractor's reports, including computer models
36 and the methodology for those models.

1 NEW SECTION. **Sec. 21.** BONDS--ANNUAL BID BOND, PERFORMANCE, AND
2 PROTEST. When any bid has been accepted, the agency may require of the
3 successful bidder a bond payable to the state in such amount with such
4 surety or sureties as determined by the agency, conditioned that he or
5 she will fully, faithfully, and accurately perform the terms of the
6 contract into which he or she has entered. Bidders who regularly do
7 business with the state shall be permitted to file with the agency an
8 annual performance bond in an amount established by the agency and such
9 annual bond shall be acceptable as surety in lieu of furnishing
10 individual bonds. The agency may also require bidders to provide bid
11 bonds conditioned that if a bidder is awarded the contract the bidder
12 will enter into and execute the contract, protest bonds, or other bonds
13 the agency deems necessary. Agencies must adhere to the policies
14 developed by the department regarding the use of protest bonds. All
15 bonds must be filed with the agency on a form acceptable to the agency.
16 Any surety issuing a bond must meet the qualification requirements
17 established by the agency.

18 NEW SECTION. **Sec. 22.** AUTHORITY TO DEBAR. (1)(a) The director
19 shall provide notice to the contractor of the director's intent to
20 debar with the specific reason for the debarment. The department must
21 establish the debarment process by rule.

22 (b) After reasonable notice to the contractor and reasonable
23 opportunity for that contractor to be heard, the director has the
24 authority to debar a contractor for cause from consideration for award
25 of contracts. The debarment must be for a period of not more than
26 three years.

27 (2) The director may debar a contractor based on a finding of one
28 or more of the following causes:

29 (a) Conviction for commission of a criminal offense as an incident
30 to obtaining or attempting to obtain a public or private contract or
31 subcontract, or in the performance of such contract or subcontract;

32 (b) Conviction under state or federal statutes of embezzlement,
33 theft, forgery, bribery, falsification or destruction of records,
34 receiving stolen property, or any other offense indicating a lack of
35 business integrity or business honesty that currently, seriously, and
36 directly affects responsibility as a state contractor;

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

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

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

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

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

17 (f) Violation of ethical standards set forth in section 3 of this
18 act; and

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

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

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

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

28 NEW SECTION. **Sec. 23.** TRANSPARENCY. (1) Agencies must annually
29 submit to the department a list of all contracts that the agency has
30 entered into or renewed. "Contracts," for the purposes of this
31 section, does not include purchase orders. The department must
32 maintain a publicly available list of all contracts entered into by
33 agencies during each fiscal year, except that contracts for the
34 employment of expert witnesses for the purposes of litigation shall not
35 be made publicly available to the extent that information is exempt
36 from disclosure under state law. Except as otherwise exempt, the data
37 must identify the contracting agency, the contractor, the purpose of

1 the contract, effective dates and periods of performance, the cost of
2 the contract and funding source, any substantive modifications to the
3 contract, and whether the contract was competitively procured or
4 awarded on a sole source basis.

5 (2) The department may conduct audits of its master contracts and
6 convenience contracts to ensure that the contractor is in compliance
7 with the contract terms and conditions, including but not limited to
8 providing only the goods and services specified in the contract at the
9 contract price.

10 NEW __ SECTION. **Sec. 24.** CONTRACT AUDITS AND INVESTIGATIVE
11 FINDINGS--REPORT BY STATE AUDITOR AND ATTORNEY GENERAL. The state
12 auditor and the attorney general must annually by November 30th of each
13 year, provide a collaborative report of contract audit and
14 investigative findings, enforcement actions, and the status of agency
15 resolution to the governor and the policy and fiscal committees of the
16 legislature.

17 **Sec. 25.** RCW 43.19.005 and 2011 1st sp.s. c 43 s 103 are each
18 amended to read as follows:

19 (1) The department of enterprise services is created as an
20 executive branch agency. The department is vested with all powers and
21 duties transferred to it under chapter 43, Laws of 2011 1st sp. sess.
22 and such other powers and duties as may be authorized by law.

23 (2) In addition to the powers and duties as provided in chapter 43,
24 Laws of 2011 1st sp. sess., the department shall(+

25 ~~(a)~~) provide products and services to support state agencies, and
26 may enter into agreements with any other governmental entity or a
27 public benefit nonprofit organization, in compliance with RCW
28 39.34.055, to furnish such products and services as deemed appropriate
29 by both parties. The agreement shall provide for the reimbursement to
30 the department of the reasonable cost of the products and services
31 furnished. All governmental entities of this state may enter into such
32 agreements, unless otherwise prohibited(~~;~~and

33 ~~(b) Make available to state, local, and federal agencies, local~~
34 ~~governments, and public benefit nonprofit corporations on a full cost~~
35 ~~recovery basis information and printing services to include equipment~~
36 ~~acquisition assistance, including leasing, brokering, and establishing~~

1 ~~master contracts. For the purposes of this section "public benefit~~
2 ~~nonprofit corporation" means a public benefit nonprofit corporation as~~
3 ~~defined in RCW 24.03.005 that is receiving local, state, or federal~~
4 ~~funds either directly or through a public agency other than an Indian~~
5 ~~tribe or political subdivision of another state)).~~

6 **Sec. 26.** RCW 43.19.725 and 2011 c 358 s 2 are each amended to read
7 as follows:

8 (1) The department (~~(of general administration)~~) must develop a
9 model plan for state agencies to increase: (a) The number of small
10 businesses registering in the state's (~~(common)~~) enterprise vendor
11 registration and bid notification system; (b) the number of such
12 registered small businesses annually receiving state contracts for
13 goods and services purchased by the state; and (c) the percentage of
14 total state dollars spent for goods and services purchased from such
15 registered small businesses. The goal of the plan is to increase the
16 number of small businesses receiving state contracts as well as the
17 percentage of total state dollars spent for goods and services from
18 small businesses registered in the state's (~~(common)~~) enterprise vendor
19 registration and bid notification system by at least fifty percent in
20 fiscal year 2013, and at least one hundred percent in fiscal year 2015
21 over the baseline data reported for fiscal year 2011.

22 (2) (~~All state purchasing agencies~~) The department, the
23 department of transportation, and institutions of higher education as
24 defined in RCW 28B.10.016 may adopt the model plan developed by the
25 department (~~(of general administration)~~) under subsection (1) of this
26 section. (~~A state purchasing agency that~~) If the agency does not
27 adopt the model plan, it must establish and implement a plan consistent
28 with the goals of subsection (1) of this section.

29 (3) To facilitate the participation of small businesses in the
30 provision of goods and services to the state, including purchases under
31 chapters (~~(39.29)~~) 39.--- (the new chapter created in section 30 of
32 this act) and 43.105 RCW, the (~~(state purchasing and material control)~~)
33 director, under the powers granted (~~(by RCW 43.19.190 through~~
34 ~~43.19.1939)~~) under this chapter, and (~~(all state purchasing agencies)~~)
35 the department, the department of transportation, and institutions of
36 higher education as defined in RCW 28B.10.016 operating under delegated
37 authority granted under this chapter or RCW (~~(43.19.190 or)~~)

1 28B.10.029, must give technical assistance to small businesses
2 regarding the state bidding process. Such technical assistance shall
3 include providing opportunities for the agency to answer vendor
4 questions about the bid solicitation requirements in advance of the bid
5 due date and, upon request, holding a debriefing after the contract
6 award to assist the vendor in understanding how to improve his or her
7 responses for future competitive procurements.

8 (4)(a) (~~(All state purchasing agencies)~~) The department, the
9 department of transportation, and institutions of higher education as
10 defined in RCW 28B.10.016 must maintain records of state purchasing
11 contracts awarded to registered small businesses in order to track
12 outcomes and provide accurate, verifiable information regarding the
13 effects the technical assistance under subsection (3) of this section
14 is having on the number of small businesses annually receiving state
15 contracts for goods and services purchased by the state.

16 (b) The department (~~(of general administration)~~) may provide
17 assistance to other agencies attempting to maintain records of state
18 purchasing contracts awarded to registered small businesses for the
19 purposes described under (a) of this subsection.

20 (~~(5) The definitions in this subsection apply throughout this~~
21 ~~section and RCW 43.19.727 unless the context clearly requires~~
22 ~~otherwise.~~

23 (~~(a) "Small business" has the same meaning as defined in RCW~~
24 ~~39.29.006.~~

25 (~~(b) "State purchasing agencies" are limited to the department of~~
26 ~~general administration, the department of information services, the~~
27 ~~office of financial management, the department of transportation, and~~
28 ~~institutions of higher education.)~~)

29 **Sec. 27.** RCW 43.19.727 and 2011 c 358 s 3 are each amended to read
30 as follows:

31 (1) By November 15, 2013, and November 15th every two years
32 thereafter, (~~(all state purchasing agencies)~~) the department, the
33 department of transportation, and institutions of higher education as
34 defined in RCW 28B.10.016 shall submit a report to the appropriate
35 committees of the legislature providing verifiable information
36 regarding the effects the technical assistance under RCW 43.19.725(3)

1 is having on the number of small businesses annually receiving state
2 contracts for goods and services purchased by the state.

3 (2) By December 31, 2013, (~~(all state purchasing agencies)~~) the
4 department, the department of transportation, and institutions of
5 higher education as defined in RCW 28B.10.016 must use the web-based
6 information system created under subsection (3)(a) of this section to
7 capture the data required under subsection (3)(a) of this section.

8 (3)(a) The department (~~(of general administration)~~), in
9 consultation with (~~(the department of information services,)~~) the
10 department of transportation(~~(,)~~) and the department of commerce, must
11 develop and implement a web-based information system. The web-based
12 information system must be used to capture data, track outcomes, and
13 provide accurate and verifiable information regarding the effects the
14 technical assistance under RCW 43.19.725(3) is having on the number of
15 small businesses annually receiving state contracts for goods and
16 services purchased by the state. Such measurable data shall include,
17 but not be limited to: (i) The number of registered small businesses
18 that have been awarded state procurement contracts, (ii) the percentage
19 of total state dollars spent for goods and services purchased from
20 registered small businesses, and (iii) the number of registered small
21 businesses that have bid on but were not awarded state purchasing
22 contracts.

23 (b) (~~By October 1, 2011, the department of general administration,~~
24 ~~in collaboration with the department of information services and the~~
25 ~~department of transportation, shall submit a report to the appropriate~~
26 ~~committees of the legislature detailing the projected cost associated~~
27 ~~with the implementation and maintenance of the web based information~~
28 ~~system.~~

29 (~~e~~) By September 1, 2012, the department (~~(of general~~
30 ~~administration)~~), in collaboration with (~~(the department of information~~
31 ~~services and)~~) the department of transportation, shall submit a report
32 to the appropriate committees of the legislature providing any
33 recommendations for needed legislation to improve the collection of
34 data required under (a) of this subsection.

35 (~~d~~) (c) By December 31, 2013, the department (~~(of general~~
36 ~~administration)~~) must make the web-based information system available
37 to all state purchasing agencies.

1 (~~(e)~~) (d) The department (~~(of general administration)~~) may also
2 make the web-based information system available to other agencies that
3 would like to use the system for the purposes of chapter 358, Laws of
4 2011.

5 NEW SECTION. **Sec. 28.** RCW 43.19.1932, 43.19.530, 43.19.534,
6 43.19.535, 43.19.536, 43.19.538, 43.19.539, 43.19.700, 43.19.702,
7 43.19.704, 43.19.797, and 39.29.052 are each recodified as sections in
8 chapter 39.--- RCW (the new chapter created in section 30 of this act).

9 NEW SECTION. **Sec. 29.** The following acts or parts of acts are
10 each repealed:

11 (1) RCW 39.29.003 (Intent) and 1998 c 101 s 1, 1993 c 433 s 1, 1987
12 c 414 s 1, & 1979 ex.s. c 61 s 1;

13 (2) RCW 39.29.006 (Definitions) and 2011 c 358 s 7, 2009 c 486 s 6,
14 2002 c 354 s 235, 1998 c 101 s 2, 1993 c 433 s 2, 1987 c 414 s 2, 1981
15 c 263 s 1, & 1979 ex.s. c 61 s 2;

16 (3) RCW 39.29.008 (Limitation on personal service contracts) and
17 1993 c 433 s 6;

18 (4) RCW 39.29.009 (Prohibition on certain personal service
19 contracts) and 2011 1st sp.s. c 21 s 60;

20 (5) RCW 39.29.011 (Competitive solicitation required--Exceptions)
21 and 2011 1st sp.s. c 43 s 522, 2011 c 358 s 4, 2009 c 486 s 7, 1998 c
22 101 s 3, & 1987 c 414 s 3;

23 (6) RCW 39.29.016 (Emergency contracts) and 2011 1st sp.s. c 43 s
24 523, 1998 c 101 s 4, 1996 c 288 s 29, & 1987 c 414 s 4;

25 (7) RCW 39.29.018 (Sole source contracts) and 2011 1st sp.s. c 43
26 s 524, 2009 c 486 s 8, 1998 c 101 s 5, 1996 c 288 s 30, 1993 c 433 s 5,
27 & 1987 c 414 s 5;

28 (8) RCW 39.29.020 (Compliance--Expenditure of funds prohibited--
29 Civil penalty) and 1987 c 414 s 6 & 1974 ex.s. c 191 s 2;

30 (9) RCW 39.29.025 (Amendments) and 2011 1st sp.s. c 43 s 525, 1998
31 c 101 s 6, 1996 c 288 s 31, & 1993 c 433 s 3;

32 (10) RCW 39.29.040 (Exemption of certain contracts) and 2002 c 260
33 s 11, 2002 c 200 s 2, 1998 c 101 s 7, 1996 c 2 s 19, 1995 c 80 s 1,
34 1987 c 414 s 7, 1986 c 33 s 3, & 1979 ex.s. c 61 s 4;

35 (11) RCW 39.29.050 (Contracts subject to requirements established

1 under office of minority and women's business enterprises) and 1983 c
2 120 s 12;

3 (12) RCW 39.29.055 (Contracts--Filing--Public inspection--Review
4 and approval--Effective date) and 2011 1st sp.s. c 43 s 526, 1998 c 101
5 s 8, 1996 c 288 s 32, & 1993 c 433 s 7;

6 (13) RCW 39.29.065 (Department of enterprise services to establish
7 policies and procedures--Adjustment of dollar thresholds) and 2011 1st
8 sp.s. c 43 s 527, 2009 c 486 s 9, 1998 c 101 s 9, & 1987 c 414 s 8;

9 (14) RCW 39.29.068 (Department of enterprise services to maintain
10 list of contracts--Report to legislature) and 2011 1st sp.s. c 43 s
11 528;

12 (15) RCW 39.29.075 (Summary reports on contracts) and 2011 1st
13 sp.s. c 43 s 529 & 1987 c 414 s 9;

14 (16) RCW 39.29.080 (Data generated under personal services
15 contracts) and 1997 c 373 s 1;

16 (17) RCW 39.29.090 (Contracts awarded by institutions of higher
17 education) and 2011 1st sp.s. c 43 s 530 & 1998 c 101 s 11;

18 (18) RCW 39.29.100 (Contract management--Uniform guidelines--
19 Guidebook) and 2011 1st sp.s. c 43 s 531 & 2002 c 260 s 7;

20 (19) RCW 39.29.110 (Use of guidelines--Report to department of
21 enterprise services) and 2011 1st sp.s. c 43 s 532 & 2002 c 260 s 8;

22 (20) RCW 39.29.120 (Contract management--Training--Risk-based
23 audits--Reports) and 2011 1st sp.s. c 43 s 533 & 2002 c 260 s 9;

24 (21) RCW 39.29.130 (Contract audits and investigative findings--
25 Report by state auditor and attorney general) and 2002 c 260 s 10;

26 (22) RCW 39.29.900 (Severability--1987 c 414) and 1987 c 414 s 13;

27 (23) RCW 43.19.180 (State purchasing and material control--
28 Director's responsibility) and 2011 1st sp.s. c 43 s 205, 2009 c 549 s
29 5063, 1975-'76 2nd ex.s. c 21 s 1, & 1965 c 8 s 43.19.180;

30 (24) RCW 43.19.185 (State purchasing and material control--System
31 for the use of credit cards or similar devices to be developed--Rules)
32 and 2011 1st sp.s. c 43 s 206, 1987 c 47 s 1, & 1982 1st ex.s. c 45 s
33 1;

34 (25) RCW 43.19.190 (State purchasing and material control--
35 Director's powers and duties--Rules) and 2011 1st sp.s. c 43 s 805,
36 2011 1st sp.s. c 43 s 207, 2002 c 200 s 3, 1995 c 269 s 1401, 1994 c
37 138 s 1, 1993 sp.s. c 10 s 2, 1993 c 379 s 102, & 1991 c 238 s 135;

1 (26) RCW 43.19.1901 ("Purchase" includes leasing or renting--
2 Electronic data processing equipment excepted) and 1987 c 434 s 23,
3 1983 c 3 s 102, & 1967 ex.s. c 104 s 1;

4 (27) RCW 43.19.1905 (Statewide policy for purchasing and material
5 control--Definitions) and 2011 1st sp.s. c 43 s 208, 2009 c 486 s 10,
6 & 2008 c 215 s 4;

7 (28) RCW 43.19.19052 (Initial purchasing and material control
8 policy--Legislative intent--Agency cooperation) and 2011 1st sp.s. c 43
9 s 209, 1998 c 245 s 54, 1995 c 269 s 1403, 1986 c 158 s 9, 1979 c 151
10 s 98, & 1975-'76 2nd ex.s. c 21 s 6;

11 (29) RCW 43.19.1906 (Competitive bids--Procedure--Exceptions) and
12 2011 1st sp.s. c 43 s 210, 2008 c 215 s 5, 2006 c 363 s 1, & 2002 c 332
13 s 4;

14 (30) RCW 43.19.1908 (Bids--Solicitation--Qualified bidders) and
15 2011 1st sp.s. c 43 s 211, 2009 c 486 s 11, 2006 c 363 s 2, 1994 c 300
16 s 2, & 1965 c 8 s 43.19.1908;

17 (31) RCW 43.19.1911 (Competitive bids--Notice of modification or
18 cancellation--Cancellation requirements--Lowest responsible bidder--
19 Preferential purchase--Life cycle costing) and 2006 c 363 s 3, 2005 c
20 204 s 5, 2003 c 136 s 6, 1996 c 69 s 2, 1989 c 431 s 60, 1983 c 183 s
21 4, 1980 c 172 s 8, & 1965 c 8 s 43.19.1911;

22 (32) RCW 43.19.1913 (Rejection of bid for previous unsatisfactory
23 performance) and 2011 1st sp.s. c 43 s 212 & 1965 c 8 s 43.19.1913;

24 (33) RCW 43.19.1914 (Low bidder claiming error--Prohibition on
25 later bid for same project) and 1996 c 18 s 7;

26 (34) RCW 43.19.1915 (Bidder's bond--Annual bid bond) and 2011 1st
27 sp.s. c 43 s 213, 2009 c 549 s 5064, & 1965 c 8 s 43.19.1915;

28 (35) RCW 43.19.1937 (Acceptance of benefits, gifts, etc.,
29 prohibited--Penalties) and 2009 c 549 s 5065, 1995 c 269 s 1405, 1975-
30 '76 2nd ex.s. c 21 s 13, & 1965 c 8 s 43.19.1937;

31 (36) RCW 43.19.1939 (Unlawful to offer, give, accept, benefits as
32 inducement for or to refrain from bidding--Penalty) and 2003 c 53 s 226
33 & 1965 c 8 s 43.19.1939; and

34 (37) RCW 43.19.200 (Duty of others in relation to purchases--
35 Emergency purchases--Written notifications) and 2011 1st sp.s. c 43 s
36 221, 2009 c 549 s 5066, 1986 c 158 s 10, 1984 c 102 s 2, 1971 c 81 s
37 111, & 1965 c 8 s 43.19.200.

1 NEW SECTION. **Sec. 30.** Sections 1 through 24 of this act
2 constitute a new chapter in Title 39 RCW.

3 NEW SECTION. **Sec. 31.** This act takes effect January 1, 2013.

4 NEW SECTION. **Sec. 32.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

 Passed by the House March 6, 2012.

 Passed by the Senate March 2, 2012.

 Approved by the Governor March 30, 2012.

 Filed in Office of Secretary of State March 30, 2012.