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**HOUSE BILL 1044**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Representatives Santos, Morris, Smith, Gregerson, Jinkins, Bergquist, Hudgins, and Pollet

AN ACT Relating to increasing the regulatory oversight and accountability of the office of minority and women's business enterprises; amending RCW 39.19.020, 39.19.060, 39.19.080, 39.19.090, 39.19.200, and 39.19.250; adding a new section to chapter 39.19 RCW; repealing RCW 39.19.100 and 39.19.110; and prescribing penalties.

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

**Sec.**  RCW 39.19.020 and 1996 c 69 s 4 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Advisory committee" means the advisory committee on minority and women's business enterprises.

(2) "Broker" means a person that provides a bona fide service, such as professional, technical, consultant, brokerage, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of a contract.

(3) "Contractor" means an individual or entity granted statecertification and awarded either a direct contract with an agency or an indirect contract as a subcontractor to perform a service or provide goods.

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

(5) "Director" means the director of the office of minority and women's business enterprises.

((~~(4)~~)) (6) "Educational institutions" means the state universities, the regional universities, The Evergreen State College, and the community colleges.

((~~(5)~~)) (7) "Goals" means annual overall agency goals, expressed as a percentage of dollar volume, for participation by minority and women- owned and controlled businesses and shall not be construed as a minimum goal for any particular contract or for any particular geographical area. It is the intent of this chapter that such overall agency goals shall be achievable and shall be met on a contract-by-contract or class-of-contract basis.

((~~(6)~~)) (8) "Goods and/or services" includes professional services and all other goods and services.

((~~(7)~~)) (9) "Office" means the office of minority and women's business enterprises.

((~~(8)~~)) (10) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons.

((~~(9)~~)) (11) "Procurement" means the purchase, lease, or rental of any goods or services.

((~~(10)~~)) (12) "Public works" means all work, construction, highway and ferry construction, alteration, repair, or improvement other than ordinary maintenance, which a state agency or educational institution is authorized or required by law to undertake.

((~~(11)~~)) (13) "State agency" includes the state of Washington and all agencies, departments, offices, divisions, boards, commissions, and correctional and other types of institutions.

**Sec.**  RCW 39.19.060 and 1996 c 288 s 28 are each amended to read as follows:

(1) Each state agency and educational institution shall comply with the annual goals established for that agency or institution under this chapter for public works and procuring goods or services. This chapter applies to all public works and procurement by state agencies and educational institutions, including all contracts and other procurement under chapters 28B.10, 39.04, ((~~39.29~~)) 39.26, 43.19, and 47.28 RCW.

(2) Each state agency shall adopt a plan, developed in consultation with the director and the advisory committee, to insure that minority and women-owned businesses are afforded the maximum practicable opportunity to directly and meaningfully participate in the execution of public contracts for public works and goods and services. The plan shall include specific measures the agency will undertake to increase the participation of certified minority and women-owned businesses.

(3) Of all state agencies and educational institutions, the office must annually identify those: (a) In the lowest quintile of utilization of minority and women-owned contractors as a percentage of all contracts issued by the agency; (b) in the lowest quintile of the dollar value awarded to minority and women-owned contractors as a percentage of the dollar value of all contracts issued by the agency; and (c) that are performing significantly below their established goals, as determined by the office. The office must meet with each identified agency to review its plan and identify available tools and actions for increasing participation.

(4) The office shall annually notify the governor, the state auditor, and the joint legislative audit and review committee of all agencies and educational institutions not in compliance with this chapter.

**Sec.**  RCW 39.19.080 and 1987 c 328 s 5 are each amended to read as follows:

((~~(1)~~)) A person, firm, corporation, business, union, or other organization shall not:

((~~(a)~~)) (1) Prevent or interfere with a contractor's or subcontractor's compliance with this chapter, or any rule adopted under this chapter;

((~~(b)~~)) (2) Submit false or fraudulent information to the state concerning compliance with this chapter or any such rule;

((~~(c)~~)) (3) Fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a minority or women's business enterprise for the purpose of this chapter;

((~~(d)~~)) (4) Knowingly make a false statement, whether by affidavit, verified statement, report, or other representation, to a state official or employee for the purpose of influencing the certification or denial of certification of any entity as a minority or women's business enterprise;

((~~(e)~~)) (5) Knowingly obstruct, impede, or attempt to obstruct or impede any state official or employee who is investigating the qualification of a business entity that has requested certification as a minority or women's business enterprise;

((~~(f)~~)) (6) Fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public moneys to which the person is not entitled under this chapter; or

((~~(g)~~)) (7) Knowingly make false statements that any entity is or is not certified as a minority or women's business enterprise for purposes of obtaining a contract governed by this chapter.

((~~(2) Any person or entity violating this chapter or any rule adopted under this chapter shall be subject to the penalties in RCW 39.19.090. Nothing in this section prevents the state agency or educational institution from pursuing such procedures or sanctions as are otherwise provided by statute, rule, or contract provision.~~))

**Sec.**  RCW 39.19.090 and 1987 c 328 s 6 are each amended to read as follows:

(1)(a) If a person, firm, corporation, or business does not comply with any provision of this chapter other than RCW 39.19.080, or does not comply with a contract requirement established under this chapter, the state may ((~~withhold~~)) impose one or more of the following penalties: Withholding payment, ((~~debar~~)) decertifying the contractor, debarring the contractor, ((~~suspend, or terminate~~)) suspending or terminating the contract ((~~and subject~~)), or subjecting the contractor to civil penalties of up to ten percent of the amount of the contract or up to five thousand dollars for each violation. ((~~The office shall adopt, by rule, criteria for the imposition of penalties under this section. Wilful~~))

(b) If a person, firm, corporation, or business commits any of the activities prohibited in RCW 39.19.080, the state must impose one or more of the following penalties: Withholding payment, decertifying the contractor, debarring the contractor for a period between one and three years, terminating the contract, or subjecting the contractor to civil penalties of between two and ten percent of the amount of the contract or between one and five thousand dollars for each violation.

(c) In addition to any other penalties imposed, willful repeated violations, exceeding a single violation, ((~~may~~)) must disqualify the contractor from further participation in state contracts for a period of ((~~up to~~)) three years. A willful violation includes a conscious or deliberate false statement, misrepresentation, omission, or concealment of a material fact, with the specific intent of obtaining, continuing, or increasing benefits under this chapter.

(2) An apparent low-bidder must be in compliance with the contract provisions required under this chapter as a condition precedent to the granting of a notice of award by any state agency or educational institution.

(3) The office shall follow administrative procedures under chapter 34.05 RCW in determining a violation and imposing penalties under this chapter. The office shall adopt, by rule, criteria for the imposition of penalties under this section. The rule may incorporate the debarment process authorized for the department of enterprise services in RCW 39.26.200.

(4)(a) An investigation unit is established within the office for the purpose of detecting and investigating fraud and violations of this chapter. The office must employ qualified personnel for the unit.

(b) The director and the investigation unit are authorized to receive criminal history record information that includes nonconviction data for any purpose associated with the investigation of fraud or for violations of this chapter. Dissemination or use of nonconviction data for purposes other than that authorized in this section is prohibited.

(c) For the purpose of any investigation or proceeding under this chapter, the director or the director's designee may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or recordswhich the director or the director's designee deems relevant or material to the inquiry.

(d) Subpoenas issued under this section may be enforced under RCW 34.05.588.

(e) The investigation unit must annually:

(i) Conduct a site review of a minimum of three percent of persons, firms, corporations, or businesses awarded a contract under this chapter;

(ii) Submit a response for all complaints for investigation made by an external agency to the agency submitting the complaint;

(iii) Develop and implement a process for prioritizing and conducting thorough investigations of persons, firms, corporations, or businesses identified by an external complaint and determined to be the highest priority for the agency; and

(iv) Develop and implement a process for prioritizing and conducting thorough investigations of persons, firms, corporations, or businesses internally identified and determined to be the highest priority for the agency.

(5) The procedures and sanctions in this section are not exclusive; nothing in this section prevents the state agency or educational institution administering the contracts from pursuing such procedures or sanctions as are otherwise provided by statute, rule, or contract provision.

NEW SECTION. **Sec.**  A new section is added to chapter 39.19 RCW to read as follows:

(1) The director or director's designee may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed documents, records, or evidence are located, or in Thurston county. The application must:

(a) State that an order is sought under this section;

(b) Adequately specify the documents, records, evidence, or testimony; and

(c) Include a declaration made under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the office's authority and that the subpoenaed documents, records, evidence, or testimony are reasonably related to an investigation within the office's authority.

(2) When an application under this section is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the documents, records, evidence, or testimony.

(3) The director or director's designee may seek approval and a court may issue an order under this section without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3).

**Sec.**  RCW 39.19.200 and 1993 c 195 s 1 are each amended to read as follows:

The minority and women's business enterprises account is created in the custody of the state treasurer. All receipts from RCW 39.19.210, 39.19.220, and 39.19.230 and civil penalties imposed under RCW 39.19.090 shall be deposited in the account. Expenditures from the account may be used only for the purposes defraying all or part of the costs of the office in administering this chapter. Only the director or the director's designee may authorize expenditures from the account. Moneys in the account may be spent only after appropriation.

**Sec.**  RCW 39.19.250 and 2009 c 348 s 2 are each amended to read as follows:

(1) For the purpose of annual reporting on progress required by ((~~section 1 of this act~~)) RCW 39.19.020, each state agency and educational institution shall submit data to the office and the office of minority and women's business enterprises on the participation by qualified minority and women-owned and controlled businesses in the agency's or institution's contracts and other related information requested by the director. The director of the office of minority and women's business enterprises shall determine the content and format of the data and the reporting schedule, which must be at least annually.

(2) The office must develop and maintain a list of contact people at each state agency and educational institution ((~~that is~~)) who are able to present to hearings of the appropriate committees of the legislature its progress in carrying out the purposes of chapter 39.19 RCW.

(3) The office must submit a report aggregating the data received from each state agency and educational institution, and the information identified and actions taken under RCW 39.19.060(3) and 39.19.090(4), to the legislature and the governor.

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

(1) RCW 39.19.100 (Enforcement by attorney general—Injunctive relief) and 1987 c 328 s 12; and

(2) RCW 39.19.110 (Enforcement by attorney general—Investigative powers) and 1987 c 328 s 13.

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