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**SENATE BILL 5075**

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

**By** Senator Baumgartner; by request of Department of Enterprise Services

AN ACT Relating to making nonsubstantive changes to procurement law; amending RCW 28B.10.029, 35.57.080, 36.100.190, 39.04.190, 39.26.070, 39.26.251, 39.26.255, 39.26.271, 39.35C.050, 39.35C.090, and 43.19.1919; reenacting and amending RCW 39.26.010; and repealing RCW 43.19.520, 43.19.525, and 43.19.533.

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

**Sec.**  RCW 28B.10.029 and 2013 c 291 s 27 are each amended to read as follows:

(1)(a) An institution of higher education may, consistent with RCW 28B.10.925 and 28B.10.926, exercise independently those powers otherwise granted to the director of enterprise services in chapters 43.19 and 39.26 RCW in connection with the purchase and disposition of all material, supplies, services, and equipment needed for the support, maintenance, and use of the respective institution of higher education.

(b) Property disposition policies followed by institutions of higher education shall be consistent with policies followed by the department of enterprise services.

(c)(i) Except as provided in (c)(ii) and (iii) of this subsection and elsewhere as provided by law, purchasing policies and procedures followed by institutions of higher education shall be in compliance with chapters 39.19, ((~~39.29~~)) 39.26, and 43.03 RCW, and RCW 43.19.1917, 43.19.685, ((~~39.26.260 through 39.26.271,~~)) and 43.19.560 through 43.19.637.

(ii) Institutions of higher education may use all appropriate means for making and paying for travel arrangements including, but not limited to, electronic booking and reservations, advance payment and deposits for tours, lodging, and other necessary expenses, and other travel transactions based on standard industry practices and federal accountable plan requirements. Such arrangements shall support student, faculty, staff, and other participants' travel, by groups and individuals, both domestic and international, in the most cost-effective and efficient manner possible, regardless of the source of funds.

(iii) Formal sealed, electronic, or web-based competitive bidding is not necessary for purchases or personal services contracts by institutions of higher education for less than one hundred thousand dollars. However, for purchases and personal services contracts of ten thousand dollars or more and less than one hundred thousand dollars, quotations must be secured from at least three vendors to assure establishment of a competitive price and may be obtained by telephone, electronic, or written quotations, or any combination thereof. As part of securing the three vendor quotations, institutions of higher education must invite at least one quotation each from a certified minority and a certified woman-owned vendor that otherwise qualifies to perform the work. A record of competition for all such purchases and personal services contracts of ten thousand dollars or more and less than one hundred thousand dollars must be documented for audit purposes.

(d) Purchases under chapter ((~~39.29~~)) 39.26, 43.19, or 43.105 RCW by institutions of higher education may be made by using contracts for materials, supplies, services, or equipment negotiated or entered into by, for, or through group purchasing organizations.

(e) The community and technical colleges shall comply with RCW 43.19.450.

(f) Except for the University of Washington, institutions of higher education shall comply with RCW 43.19.769, 43.19.763, and 43.19.781.

(g) If an institution of higher education can satisfactorily demonstrate to the director of the office of financial management that the cost of compliance is greater than the value of benefits from any of the following statutes, then it shall be exempt from them: RCW 43.19.685 and 43.19.637.

(h) Any institution of higher education that chooses to exercise independent purchasing authority for a commodity or group of commodities shall notify the director of enterprise services. Thereafter the director of enterprise services shall not be required to provide those services for that institution for the duration of the enterprise services contract term for that commodity or group of commodities.

(2) The council of presidents and the state board for community and technical colleges shall convene its correctional industries business development advisory committee, and work collaboratively with correctional industries, to:

(a) Reaffirm purchasing criteria and ensure that quality, service, and timely delivery result in the best value for expenditure of state dollars;

(b) Update the approved list of correctional industries products from which higher education shall purchase; and

(c) Develop recommendations on ways to continue to build correctional industries' business with institutions of higher education.

(3) Higher education and correctional industries shall develop a plan to build higher education business with correctional industries to increase higher education purchases of correctional industries products, based upon the criteria established in subsection (2) of this section. The plan shall include the correctional industries' production and sales goals for higher education and an approved list of products from which higher education institutions shall purchase, based on the criteria established in subsection (2) of this section. Higher education and correctional industries shall report to the legislature regarding the plan and its implementation no later than January 30, 2005.

(4)(a) Institutions of higher education shall set as a target to contract, beginning not later than June 30, 2006, to purchase one percent of the total goods and services required by the institutions each year produced or provided in whole or in part from class II inmate work programs operated by the department of corrections. Institutions of higher education shall set as a target to contract, beginning not later than June 30, 2008, to purchase two percent of the total goods and services required by the institutions each year produced or provided in whole or in part from class II inmate work programs operated by the department of corrections.

(b) Institutions of higher education shall endeavor to assure the department of corrections has notifications of bid opportunities with the goal of meeting or exceeding the purchasing target in (a) of this subsection.

**Sec.**  RCW 35.57.080 and 1999 c 165 s 8 are each amended to read as follows:

In addition to provisions contained in chapter 39.04 RCW, the public facilities district is authorized to follow procedures contained in chapter 39.26 RCW ((~~43.19.1906 and 43.19.1911~~)) for all purchases, contracts for purchase, and sales.

**Sec.**  RCW 36.100.190 and 1995 c 396 s 16 are each amended to read as follows:

In addition to provisions contained in chapter 39.04 RCW, the public facilities district is authorized to follow procedures contained in chapter 39.26 RCW ((~~43.19.1906 and 43.19.1911~~)) for all purchases, contracts for purchase, and sales.

**Sec.**  RCW 39.04.190 and 1993 c 198 s 2 are each amended to read as follows:

(1) This section provides a uniform process to award contracts for the purchase of any materials, equipment, supplies, or services by those municipalities that are authorized to use this process in lieu of the requirements for formal sealed bidding. The state statutes governing a specific type of municipality shall establish the maximum dollar thresholds of the contracts that can be awarded under this process, and may include other matters concerning the awarding of contracts for purchases, for the municipality.

(2) At least twice per year, the municipality shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of vendor lists and solicit the names of vendors for the lists. Municipalities shall by resolution establish a procedure for securing telephone or written quotations, or both, from at least three different vendors whenever possible to assure that a competitive price is established and for awarding the contracts for the purchase of any materials, equipment, supplies, or services to the lowest responsible bidder as defined in chapter 39.26 RCW ((~~43.19.1911~~)). Immediately after the award is made, the bid quotations obtained shall be recorded, open to public inspection, and shall be available by telephone inquiry. A contract awarded pursuant to this section need not be advertised.

**Sec.**  RCW 39.26.010 and 2014 c 135 s 2 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

((~~(6)~~))(5) "Community rehabilitation program of the department of social and health services" means any entity that:

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

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

((~~(7)~~))(6) "Competitive solicitation" means a documented formal process providing an equal and open opportunity to bidders and culminating in a selection based on predetermined criteria.

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

((~~(9)~~))(8) "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.

((~~(10)~~))(9) "Department" means the department of enterprise services.

((~~(11)~~))(10) "Director" means the director of the department of enterprise services.

((~~(12)~~))(11) "Estimated useful life" of an item means the estimated time from the date of acquisition to the date of replacement or disposal, determined in any reasonable manner.

((~~(13)~~))(12) "Goods" means products, materials, supplies, or equipment provided by a contractor.

((~~(14)~~))(13) "In-state business" means a business that has its principal office located in Washington.

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

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

((~~(17)~~))(16) "Microbusiness" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that: (a) Is owned and operated independently from all other businesses; and (b) has a gross revenue of less than one million dollars annually as reported on its federal tax return or on its return filed with the department of revenue.

((~~(18)~~))(17) "Minibusiness" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that: (a) Is owned and operated independently from all other businesses; and (b) has a gross revenue of less than three million dollars, but one million dollars or more annually as reported on its federal tax return or on its return filed with the department of revenue.

((~~(19)~~))(18) "Polychlorinated biphenyls" means any polychlorinated biphenyl congeners and homologs.

((~~(20)~~))(19) "Practical quantification limit" means the lowest concentration that can be reliably measured within specified limits of precision, accuracy, representativeness, completeness, and comparability during routine laboratory operating conditions.

((~~(21)~~))(20) "Purchase" means the acquisition of goods or services, including the leasing or renting of goods.

((~~(22)~~))(21) "Services" means labor, work, analysis, or similar activities provided by a contractor to accomplish a specific scope of work.

((~~(23)~~))(22) "Small business" means an in-state business, including a sole proprietorship, corporation, partnership, or other legal entity, that:

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

(i) Fifty or fewer employees; or

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

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

((~~(24)~~))(23) "Sole source" means a contractor providing goods or services of such a unique nature or sole availability at the location required that the contractor is clearly and justifiably the only practicable source to provide the goods or services.

((~~(25)~~))(24) "Washington grown" has the definition in RCW 15.64.060.

**Sec.**  RCW 39.26.070 and 2012 c 224 s 8 are each amended to read as follows:

A convenience contract is a contract for specific goods or services, or both, that is solicited and established ((~~by the department~~)) in accordance with procurement laws and rules ((~~on behalf of and~~)) for use by a specific agency or a specified group of agencies as needed from time to time. A convenience contract is not available for general use and may only be used as specified by the department. Convenience contracts are not intended to replace or supersede master contracts as defined in this chapter.

**Sec.**  RCW 39.26.251 and 2012 c 220 s 1 are each amended to read as follows:

(1) State agencies, the legislature, and departments shall purchase for their use all goods and services required by the legislature, agencies, or departments that are produced or provided in whole or in part from class II inmate work programs operated by the department of corrections through state contract. These goods and services shall not be purchased from any other source unless, upon application by the department or agency: (a) The department finds that the articles or products do not meet the reasonable requirements of the agency or department, (b) are not of equal or better quality, or (c) the price of the product or service is higher than that produced by the private sector. However, the criteria contained in (a), (b), and (c) of this subsection for purchasing goods and services from sources other than correctional industries do not apply to goods and services produced by correctional industries that primarily replace goods manufactured or services obtained from outside the state. The department of corrections and department shall adopt administrative rules that implement this section.

(2) ((~~During the 2009-2011 and 2011-2013 fiscal biennia, and in conformance with section 223(11), chapter 470, Laws of 2009 and section 221(2), chapter 367, Laws of 2011, this section does not apply to the purchase of uniforms by the Washington state ferries.~~

~~(3)~~)) Effective July 1, 2012, this section does not apply to the purchase of uniforms for correctional officers employed with the Washington state department of corrections.

**Sec.**  RCW 39.26.255 and 2011 1st sp.s. c 43 s 228 are each amended to read as follows:

(1) The director shall develop specifications and adopt rules for the purchase of products which will provide for preferential purchase of products containing recycled material by:

(a) The use of a weighting factor determined by the amount of recycled material in a product, where appropriate and known in advance to potential bidders, to determine the lowest responsible bidder. The actual dollars bid shall be the contracted amount. If the department determines, according to criteria established by rule that the use of this weighting factor does not encourage the use of more recycled material, the department shall consider and award bids without regard to the weighting factor. In making this determination, the department shall consider but not be limited to such factors as adequate competition, economics or environmental constraints, quality, and availability.

(b) Requiring a written statement of the percentage range of recycled content from the bidder providing products containing recycled ((~~[material]~~)) material. The range may be stated in five percent increments.

(2) The director shall develop a directory of businesses that have a master contract with the department that supply products containing significant quantities of recycled materials. This directory may be combined with and made accessible through the database of recycled content products to be developed under RCW 43.19A.060.

(3) The director shall encourage all parties using the state purchasing office to purchase products containing recycled materials.

(4) The rules, specifications, and bid evaluation shall be consistent with recycled content standards adopted under RCW 43.19A.020.

**Sec.**  RCW 39.26.271 and 2011 1st sp.s. c 43 s 241 are each amended to read as follows:

The director shall adopt and apply rules designed to provide for some reciprocity in bidding between Washington and those states having statutes or regulations on the list under RCW ((~~43.19.702~~)) 39.26.270. The director shall have broad discretionary power in developing these rules and the rules shall provide for reciprocity only to the extent and in those instances where the director considers it appropriate. For the purpose of determining the lowest responsible bidder pursuant to RCW ((~~43.19.1911~~)) 39.26.160, such rules shall (1) require the director to impose a reciprocity increase on bids when appropriate under the rules and (2) establish methods for determining the amount of the increase. In no instance shall such increase, if any, be paid to a vendor whose bid is accepted.

**Sec.**  RCW 39.35C.050 and 1996 c 186 s 409 are each amended to read as follows:

In addition to any other authorities conferred by law:

(1) The department, with the consent of the state agency or school district responsible for a facility, a state or regional university acting independently, and any other state agency acting through the department ((~~of general administration~~)) or as otherwise authorized by law, may:

(a) Develop and finance conservation at public facilities in accordance with express provisions of this chapter;

(b) Contract for energy services, including performance-based contracts;

(c) Contract to sell energy savings from a conservation project at public facilities to local utilities or the Bonneville power administration.

(2) A state or regional university acting independently, and any other state agency acting through the department ((~~of general administration~~)) or as otherwise authorized by law, may undertake procurements for third-party development of conservation at its facilities.

(3) A school district may:

(a) Develop and finance conservation at school district facilities;

(b) Contract for energy services, including performance-based contracts at school district facilities; and

(c) Contract to sell energy savings from energy conservation projects at school district facilities to local utilities or the Bonneville power administration directly or to local utilities or the Bonneville power administration through third parties.

(4) In exercising the authority granted by subsections (1), (2), and (3) of this section, a school district or state agency must comply with the provisions of RCW 39.35C.040.

**Sec.**  RCW 39.35C.090 and 1996 c 186 s 413 are each amended to read as follows:

In addition to any other authorities conferred by law:

(1) The department, with the consent of the state agency responsible for a facility, a state or regional university acting independently, and any other state agency acting through the department ((~~of general administration~~)) or as otherwise authorized by law, may:

(a) Contract to sell electric energy generated at state facilities to a utility; and

(b) Contract to sell thermal energy produced at state facilities to a utility.

(2) A state or regional university acting independently, and any other state agency acting through the department ((~~of general administration~~)) or as otherwise authorized by law, may:

(a) Acquire, install, permit, construct, own, operate, and maintain cogeneration and facility heating and cooling measures or equipment, or both, at its facilities;

(b) Lease state property for the installation and operation of cogeneration and facility heating and cooling equipment at its facilities;

(c) Contract to purchase all or part of the electric or thermal output of cogeneration plants at its facilities;

(d) Contract to purchase or otherwise acquire fuel or other energy sources needed to operate cogeneration plants at its facilities; and

(e) Undertake procurements for third-party development of cogeneration projects at its facilities, with successful bidders to be selected based on the responsible bid, including nonprice elements listed in RCW ((~~43.19.1911~~)) 39.26.160, that offers the greatest net achievable benefits to the state and its agencies.

(3) After July 28, 1991, a state agency shall consult with the department prior to exercising any authority granted by this section.

(4) In exercising the authority granted by subsections (1) and (2) of this section, a state agency must comply with the provisions of RCW 39.35C.080.

**Sec.**  RCW 43.19.1919 and 2013 c 291 s 5 are each amended to read as follows:

(1) The department shall sell or exchange personal property belonging to the state for which the agency, office, department, or educational institution having custody thereof has no further use, at public or private sale, and cause the moneys realized from the sale of any such property to be paid into the fund from which such property was purchased or, if such fund no longer exists, into the state general fund. This requirement is subject to the following exceptions and limitations:

(a) This section does not apply to property under RCW 27.53.045, 28A.335.180, or 43.19.1920;

(b) Sales of capital assets may be made by the department and a credit established for future purchases of capital items as provided for in chapter 39.26 RCW ((~~43.19.190 through 43.19.1939~~));

(c) Personal property, excess to a state agency, including educational institutions, shall not be sold or disposed of prior to reasonable efforts by the department to determine if other state agencies have a requirement for such personal property. Such determination shall follow sufficient notice to all state agencies to allow adequate time for them to make their needs known. Surplus items may be disposed of without prior notification to state agencies if it is determined by the director to be in the best interest of the state. The department shall maintain a record of disposed surplus property, including date and method of disposal, identity of any recipient, and approximate value of the property;

(d) This section does not apply to personal property acquired by a state organization under federal grants and contracts if in conflict with special title provisions contained in such grants or contracts;

(e) A state agency having a surplus personal property asset with a fair market value of less than five hundred dollars may transfer the asset to another state agency without charging fair market value. A state agency conducting this action must maintain adequate records to comply with agency inventory procedures and state audit requirements.

(2)(a) Prior to transferring ownership of a department-owned vessel, the department shall conduct a thorough review of the physical condition of the vessel, the vessel's operating capability, and any containers and other materials that are not fixed to the vessel.

(b) If the department determines that the vessel is in a state of advanced deterioration or poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination, the department may: (i) Not transfer the vessel until the conditions identified under this subsection have been corrected; or (ii) permanently dispose of the vessel by landfill, deconstruction, or other related method.

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

(1) RCW 43.19.520 (Purchase of products and services from entities serving or providing opportunities for disadvantaged or disabled persons--Intent) and 2005 c 204 s 1, 2003 c 136 s 1, & 1974 ex.s. c 40 s 1;

(2) RCW 43.19.525 (Purchases from entities serving or providing opportunities for disadvantaged or disabled persons--Definitions) and 2003 c 136 s 2 & 1974 ex.s. c 40 s 2; and

(3) RCW 43.19.533 (Purchases from entities serving or providing opportunities for disadvantaged or disabled persons--Existing contracts not impaired--Solicitation of vendors in good standing) and 2005 c 204 s 4 & 2003 c 136 s 5.

**--- END ---**