S-1673.2

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUBSTITUTE SENATE BILL 5572**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 65th Legislature 2017 Regular Session**

**By** Senate State Government (originally sponsored by Senators Hunt and Miloscia; by request of Office of the Chief Information Officer)

AN ACT Relating to oversight of the state procurement and contracting for information technology goods and services; and amending RCW 39.26.005, 39.26.010, 39.26.050, 39.26.060, 39.26.080, 39.26.090, 39.26.110, 39.26.130, 39.26.140, and 39.26.180.

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

**Sec.**  RCW 39.26.005 and 2012 c 224 s 1 are each amended to read as follows:

It is the intent of this chapter to promote open competition and transparency for all contracts for goods and services entered into by state agencies, unless specifically exempted under this chapter. It is further the intent of this chapter to centralize within one agency, wherever possible, the authority and responsibility for the development and oversight of policies related to state procurement and contracting. To ensure the highest ethical standards, proper accounting for contract expenditures, and for ease of public review, it is further the intent to centralize the location of information about state procurements and contracts. It is also the intent of the legislature to provide state agency contract data to the public in a searchable manner.

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

It is the intent of this act to provide additional oversight of the procurement and contracting for information technology goods and services by the state chief information officer.

**Sec.**  RCW 39.26.010 and 2015 c 79 s 5 are each 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) "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.

(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.

(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.

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

(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.

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

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

(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.

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

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

(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.

(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.

(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.

(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.

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

(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.

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

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

(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.

(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.

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

(25) "Information technology" has the definition in RCW 43.105.020.

(26) "Office" means the office of the state chief information officer within the consolidated technology services agency.

(27) "Excellence assessment" means an assessment of agency operational performance by a trained national or state examiner using an excellence framework published by the national institutes of standards and technology, United States department of commerce.

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

(1) In addition to the powers and duties provided in chapter 43.19 RCW, the department shall make available goods and services to support state agencies, and may enter into agreements with any other local or federal governmental agency or entity or a public benefit nonprofit organization, in compliance with RCW 39.34.055, and any tribes located in the state, to furnish such products and services as deemed appropriate by both parties. The department must consult with the office when it makes available information technology goods and services to ensure consistency with standards and policies to govern information technology as established by the office in accordance with RCW 43.105.054.

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

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

**Sec.**  RCW 39.26.060 and 2012 c 224 s 7 are each amended to read as follows:

(1) On behalf of the state, the department may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any goods or services with one or more states, state agencies, local governments, local government agencies, federal agencies, or tribes located in the state, in accordance with an agreement entered into between the participants. The cooperative purchasing may include, but is not limited to, joint or multiparty contracts between the entities, and master contracts or convenience contracts that are made available to other public agencies.

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

(3) Cooperative purchasing for information technology goods and services must be coordinated with the office.

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

(1) The director is responsible for the development and oversight of policy for the procurement of goods and services by all state agencies under this chapter. When establishing policies, standards, and procedures, the director shall account for differentiation in procurement practices and needs among state agencies and strive to establish policies, standards, and procedures that promote greater efficiency in procurement. Policies, standards, and procedures for the procurement of information technology goods and services must be developed in consultation with and approved by the office.

(2) The director is authorized to adopt rules, policies, and guidelines governing the procurement, contracting, and contract management of any and all goods and services procured by state agencies under this chapter. Policies and guidelines governing the procurement, contracting, and contract management of information technology goods and services must be developed in consultation with and approved by the office.

(3) The director or designee is the sole authority to enter into master contracts on behalf of the state. The director may delegate the authority to enter into master contracts for information technology goods and services to the consolidated technology services agency. The consolidated technology services agency shall comply with this chapter when establishing master contracts.

(4) Master contracts for information technology goods and services may not be designated "mandatory use" without approval of the office.

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

The director shall:

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

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

(3) Establish procurement processes for information technology goods and services, using technology standards and policies established by the office of the chief information officer under chapter ((~~43.41A~~)) 43.105 RCW. The procurement processes must be established in consultation with and approved by the office;

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

(5) Have authority to delegate to agencies authorization to purchase goods and services. The authorization must specify restrictions as to dollar amount or to specific types of goods and services, based on a risk assessment process developed by the department. Acceptance of the purchasing authorization by an agency does not relieve the agency from conformance with this chapter or from policies established by the director. Also, the director may not delegate to a state agency the authorization to purchase goods and services if the agency is not in substantial compliance with overall procurement policies as established by the director. The delegation of authority to an agency for the purchase of information technology goods and services granted under this subsection must be approved by the office. The office has the authority to change or withdraw the delegated authority for the purchase of information technology goods and services;

(6) Provide excellence assessments of its information technology contract operations every two years, and transmit completed excellence assessments and feedback reports to pertinent legislative committees and to the office of the governor.

(a) An agency's excellence assessment score measures the agency's progress towards achieving world-class performance. Each agency's goal is to achieve a sixty percent score within seven years of its first excellence assessment. When an agency achieves a sixty percent score, it must apply for a national institute of science and technology performance award.

(b) An agency that:

(i) Achieves the goal in (a) of this subsection is not required to conduct an excellence assessment every two years, but must conduct an excellence assessment at least every four years; and

(ii) Fails to achieve the goal in (a) of this subsection must achieve certification under an internationally recognized quality management system, such as ISO 9001, or its equivalent, within seven years of the first excellence assessment;

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

((~~(7)~~)) (8) Develop and implement an enterprise system for electronic procurement;

((~~(8)~~)) (9) Provide for a commodity classification system and provide for the adoption of goods and services commodity standards;

((~~(9)~~)) (10) Establish overall state policy for compliance by all agencies regarding:

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

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

((~~(10)~~)) (11) Develop guidelines and criteria for the purchase of vehicles, high gas mileage vehicles, and alternate vehicle fuels and systems, equipment, and materials, that reduce overall energy-related costs and energy use by the state, including investigations into all opportunities to aggregate the purchasing of clean technologies by state and local governments, and including the requirement that new passenger vehicles purchased by the state meet the minimum standards for passenger automobile fuel economy established by the United States secretary of transportation pursuant to the energy policy and conservation act (15 U.S.C. Sec. 2002); and

((~~(11)~~)) (12) Develop and enact rules to implement the provisions of this chapter.

**Sec.**  RCW 39.26.110 and 2012 c 224 s 12 are each amended to read as follows:

(1) The department must provide expertise and training on best practices for state procurement. The department must coordinate with the office regarding training on the best practices for state procurement of information technology goods and services.

(2) The department must establish either training or certification programs, or both, to ensure consistency in procurement practices for employees authorized to perform procurement functions under the provisions of this chapter. When establishing training or certification programs, the department may approve existing training or certification programs at state agencies. When establishing programs or approving existing programs, the department shall work with agencies with existing training programs to ensure coordination and minimize additional costs associated with training requirements. Training or certificate programs focused on the procurement of information technology goods and services must be developed and provided in partnership with the office.

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

**Sec.**  RCW 39.26.130 and 2012 c 224 s 15 are each amended to read as follows:

(1) An agency may make emergency purchases as defined in subsection (3) of this section. When an emergency purchase is made, the agency head shall submit written notification of the purchase within three business days of the purchase to the director and provide a copy to the office for purchases of information technology goods or services. This notification must contain a description of the purchase, a description of the emergency and the circumstances leading up to the emergency, and an explanation of why the circumstances required an emergency purchase.

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

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

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

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

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

(1) Agencies must submit sole source contracts to the department and make the contracts available for public inspection not less than ten working days before the proposed starting date of the contract. Agencies must provide documented justification for sole source contracts to the department when the contract is submitted, and must include evidence that the agency posted the contract opportunity at a minimum on the state's enterprise vendor registration and bid notification system. The department must provide a copy of the submittal for a sole source contract for information technology goods and services to the office for review, and the office shall notify the department if the contract should be denied or if additional justification is needed before the contract may be approved.

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

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

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

**Sec.**  RCW 39.26.180 and 2012 c 224 s 20 are each amended to read as follows:

(1) The department must adopt uniform policies and procedures for the effective and efficient management of contracts by all state agencies. Additional policies and procedures related to the management of information technology contracts must be developed in consultation with and approved by the office. The policies and procedures must, at a minimum, include:

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

(b) Model complaint and protest procedures;

(c) Alternative dispute resolution processes;

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

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

(f) Executing contracts using electronic signatures;

(g) Criteria for contract amendments;

(h) Postcontract procedures;

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

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

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

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

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

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

**--- END ---**