

HOUSE BILL REPORT

HB 1851

As Reported by House Committee On:
State Government, Elections & Information Technology

Title: An act relating to protecting taxpayers by providing for accountability and transparency in government contracting.

Brief Description: Protecting taxpayers by providing for accountability and transparency in government contracting.

Sponsors: Representatives Dolan, Harris, Hudgins, MacEwen, Kilduff, Haler, Robinson, Bergquist, Fitzgibbon, Doglio, Pollet, Ormsby and Stanford.

Brief History:

Committee Activity:

State Government, Elections & Information Technology: 2/14/17, 2/17/17 [DP].

Brief Summary of Bill

- Establishes requirements to assess and evaluate contracting costs.
- Specifies policy and reporting requirements governing contract processes.

HOUSE COMMITTEE ON STATE GOVERNMENT, ELECTIONS & INFORMATION TECHNOLOGY

Majority Report: Do pass. Signed by 5 members: Representatives Hudgins, Chair; Dolan, Vice Chair; Appleton, Gregerson and Pellicciotti.

Minority Report: Do not pass. Signed by 4 members: Representatives Koster, Ranking Minority Member; Volz, Assistant Ranking Minority Member; Irwin and Kraft.

Staff: Megan Palchak (786-7105).

Background:

In 2011 the Department of General Administration was abolished and its duties and functions were transferred to the Department of Enterprise Services (DES), including the provision of products and services to support state agencies. The Director of the DES must establish

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overall state policies, standards, and procedures regarding the procurement of goods and services by state agencies that encourage and facilitate the purchase of goods and services from Washington small businesses, microbusiness, minibusiness, and minority- and women-owned business. The DES may enter into procurement agreements and delegate its authority to enter into agreements.

The Office of Financial Management (OFM) conducts short- and long-range planning and fiscal management within the executive branch. The Joint Legislative Audit Review Committee (JLARC) is mandated, in part, to examine and report whether appropriations are expended for purposes within statutory restrictions.

Summary of Bill:

The Legislature expresses its intent to increase transparency and accountability of public contracts by requiring better evaluation of contract performance. Evaluation should include an assessment regarding the decision to contract. Contractors with access to state resources must be held to ethical standards consistent with public values.

Agencies are required to conduct a comprehensive impact assessment prior to issuing requests for proposals from private sector or nonprofit entities. The impact assessment must analyze costs for work conducted by public employees and contractors, and include a statement of performance objectives achieved via contracting. Agencies must include specific terms in their contracts with private entities, such as a cancellation clause if quality standards and budget specifications are not met.

Agencies must prepare written records regarding the decision to contract, and include the comprehensive impact assessment and itemization of performance standards contained in the contract. Written records must be maintained for the term of any contract, or five years, whichever is longer. Once the contract period or five years has concluded, the agency must prepare and file with the DES, a report regarding contract performance.

The DES uniform policies and procedures must include: (1) compliance with requirements regarding women and minority business owners; (2) model contract terms that address public employee staff time expenditures on private contract compliance; and (3) criteria for terminating performance-based contracts not achieving standards.

Agencies must monitor performance-based contracts to ensure performance standards are met.

The OFM must consider the cost of agency staff time and resources required to monitor and ensure proper contract performance, in its review of programs and services, conducted at the beginning of each fiscal year to determine whether the contracted activity would result in a reduced cost and greater efficiency. The OFM must also include a description of unanticipated costs incurred resulting from contracting out, including staff cost estimates, in its biennial report summarizing results of the examination of agency programs and services.

The JLARC's audit of DES' process to issue fines based on contractor performance, and the subsequent report to the Legislature by January 1, 2018, must include: (1) an analysis that includes cost estimates for activities performed by public employees and private contractors; (2) the extent that contracted performance objectives were met by outsourcing the contract; and (3) an assessment of the potential adverse impacts on public outsourcing of contracts.

It is clarified that the basis for fining or debarring a contractor may be two or more violations of the National Labor Relations Act within five years. The act is named the "Taxpayer Protection Act."

Appropriation: None.

Fiscal Note: Requested on February 14, 2017.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Negotiations are underway regarding contracting out. There has been little cost analysis. Cost overruns and change orders have contributed to irresponsible contracting. This bill supports transparency and accountability.

(Opposed) It is most cost-effective to allow private contractors to work and government to govern.

Persons Testifying: (In support) Representative Dolan, prime sponsor; Alia Griffing, Washington Federation of State Employees; and Todd Stidd, Washington Federation of State Employees.

(Opposed) Larry Stevens, Mechanical Contractors Association of Washington and National Electrical Contractors Association.

Persons Signed In To Testify But Not Testifying: None.