

HOUSE BILL REPORT

HB 1851

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

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];
Transportation: 2/22/17, 2/23/17 [DPS].

Brief Summary of Substitute Bill

- Requires agencies to conduct comprehensive impact assessments prior to issuing a request-for-proposal from a private sector entity or nonprofit organization for goods and services customarily and historically provided by public employees.
- Requires agencies to prepare and maintain written records regarding decisions for the provision of goods or services, including comprehensive impact statements, whether provided by public employees or under contract.
- Requires agencies to monitor performance-based work and submit reports to the Department of Enterprise Services (DES) regarding performance, whether provided by public employees or under contract.
- Requires the DES to modify its uniform policies and procedures regarding management of agency work, whether conducted by public employees or under contract, to reflect the recovery of costs and termination procedures for poor performance and other components.
- Modifies the review of services conducted by the Office of Financial Management (OFM) to include considerations such as agency staff time required for the monitoring of work done by or for the agency, to determine

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whether the work activities would result in reduced cost and greater efficiency if contracted out or conducted by public employees.

- Modifies the Joint Legislative Audit and Review Committee's audit of the OFM review of services to include analyses of cost estimates addressing activities performed by public employees and private contractors.

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 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.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Clibborn, Chair; Farrell, Vice Chair; Fey, Vice Chair; Wylie, Vice Chair; Chapman, Gregerson, Hayes, Kloba, Lovick, McBride, Morris, Ortiz-Self, Pellicciotti, Riccelli and Tarleton.

Minority Report: Do not pass. Signed by 9 members: Representatives Orcutt, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Harmsworth, Assistant Ranking Minority Member; Irwin, Pike, Shea, Stambaugh, Van Werven and Young.

Staff: Mark Matteson (786-7145).

Summary of Recommendation of Committee On Transportation Compared to Recommendation of Committee On State Government, Elections & Information Technology:

References in the substitute bill to "services" are changed to "goods and services."

The requirement to conduct a comprehensive impact assessment is limited to those instances where a request-for-proposal (RFP) will be issued under the authorities that govern the procurement of goods and services, for goods and services that have been customarily and historically provided by public employees, and where the estimated cost of performance is at least \$20,000, rather than instances where an RFP will be issued for any sort of service at any price that has been customarily and historically provided by public employees. The comprehensive impact assessment may consider whether contracts with a private sector entity may result in a gain or loss in public sector employment, rather than just a loss in public sector employment. Following the comprehensive assessment, a written record must be prepared that requires the agency to show the basis for the decision, for either contracting out for goods and services or for performing and procuring the goods and services using public sector employees.

In addition to the requirement for the agency to file with the Department of Enterprise Services (DES) every five years or upon completion of the contract a report of the performance under the contract, the agency must also report similarly regarding work

completed by public sector employees. The additional terms that govern the performance of a service that is contracted out is modified to apply to such performance by an agency.

The requirements governing uniform policies and procedures in the management of contracts are applied to the management of agency project plans, as well. The departmental review of performance-based work is required at least semiannually, instead of periodically.

If directed to do so in the omnibus operating budget, the Joint Legislative Audit and Review Committee (JLARC) or the State Auditor may conduct the review that is otherwise required of the Office of Financial Management (OFM) at the beginning of each fiscal biennium through the 2017-19 biennium, to determine whether agency work may be conducted more effectively and cost-efficiently under contract. After the OFM, JLARC, or State Auditor has reviewed the agency work to determine whether it may be more cost effective to contract the work out privately, the agency is required to post the OFM report to the agency website.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill is effective 90 days following the adjournment of the session in which the bill was passed.

Staff Summary of Public Testimony:

(In support) This legislation is the result of about four contracts in the past that have gone bad. The state's own employees had to go in, after an outside vendor had performed poorly, to fix the inadequate work. Essentially, the state paid for the same work to be done twice. So this is not trying to take away outsourcing but, with respect to managing taxpayer dollars, to be more careful and provide oversight. This bill is intended to address the goods and services procurement overseen by the DES, and not highway construction procurement or highway maintenance. There is likely an amendment based on conversations with members in the minority.

The Washington Federation of State Employees is in full support of the bill. The union has an eye on the possible misuse of state dollars. There are examples of incomplete or poor-quality work in which the state has had to pay twice essentially for the same work. Other examples exist where client-care dollars have padded the compensation of chief executive officer benefits. One of the latest trends is that contractors are building into their books of business an approach where they complete 90 percent of the work, but when it comes time to address the punch list, they walk away from the job, leaving it to state employees to finish. The overall goal is that the taxpayer should know what their money is going towards, whether it is work done by in-house employees or whether contracted out with third parties. They should know that the work is being done efficiently and effectively and that they are getting the best bang for their buck. This is intended to focus on goods and services contracts.

(Opposed) None.

Persons Testifying: Representative Dolan, prime sponsor; and Alia Griffing, Washington Federation of State Employees.

Persons Signed In To Testify But Not Testifying: None.