

HOUSE BILL REPORT

HB 1471

As Passed Legislature

Title: An act relating to modifying state procurement procedures for competitive, sole source, convenience, and emergency goods and services contracts.

Brief Description: Modifying state procurement procedures for competitive, sole source, convenience, and emergency goods and services contracts.

Sponsors: Representatives Stearns, Ramos, Gregerson and Ryu; by request of Department of Enterprise Services.

Brief History:

Committee Activity:

State Government & Tribal Relations: 1/25/23, 2/1/23 [DP].

Floor Activity:

Passed House: 2/13/23, 96-0.

Passed House: 1/10/24, 97-1.

Senate Amended.

Passed Senate: 2/28/24, 49-0.

House Concurred.

Passed House: 3/5/24, 96-0.

Passed Legislature.

Brief Summary of Bill

- Reinstates the authority of the Department of Enterprise Services (DES) to fine or debar a contractor for failure to comply with certain provisions requiring equality among workers.
- Modifies who qualifies as a sole source contractor and extends the amount of time that a sole source contract must be filed and made available for public inspection from at least 10 business days before the proposed starting date of the contract to at least 15 business days.
- Extends the time for an agency making an emergency purchase to submit

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

its emergency contract to the DES from three business days to 10 business days.

- Modifies the scope of use of convenience contracts.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: Do pass. Signed by 7 members: Representatives Ramos, Chair; Stearns, Vice Chair; Abbarno, Ranking Minority Member; Christian, Assistant Ranking Minority Member; Gregerson, Low and Mena.

Staff: Desiree Omli (786-7105).

Background:

Sole Source, Convenience, and Emergency Contracts.

The Department of Enterprise Services (DES) is responsible for the development and oversight of policy for the procurement of goods and services by all state agencies and adopts uniform policies and procedures for the effective and efficient management of contracts by all state agencies. All contracts for purchases of goods and services must be based on a competitive solicitation process. The DES may grant exemptions from competitive solicitation, including for emergency contracts, sole source contracts, and direct buy purchases.

A "sole source" refers to a contractor that provides goods or services of such a unique nature or sole availability at the location required that the contractor is clearly and justifiably the only practical source to provide the goods and services. Agencies must submit sole source contracts to the DES and make the contracts available for public inspection at least 10 working days before the proposed start date of the contract.

A "convenience contract" is a contract for specific goods, services, or both, that is solicited and established in accordance with competitive procurement rules and that is for use by a specific agency or specified group of agencies. Agencies specified in the convenience contract may use such contract as needed from time to time, enabling qualified agencies to make multiple distinct purchases off the single competitively solicited contract at the convenience of the agency, as opposed to the solicitation leading to a single project. A convenience contract is not a master contract, which in contrast is solicited and established by the DES on behalf of and for the general use by any agency for the purchase of specified goods or services.

Any agency may make emergency purchases when a set of unforeseen circumstances beyond the control of the agency that either: (a) presents 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. Emergency contracts must be submitted to the DES and made available for inspection within three working days following the commencement of work or execution of the contract, whichever is first.

Debarment.

A business or individual that commits certain acts may be fined by the DES or barred from bidding on or entering a contract with the state for up to three years. This process, known as debarment, applies to both public works and contracts for goods and services. During the 2017-2019 fiscal biennium, the DES had authority to debar a contractor for the failure to comply with a provision in a state master contract or other agreement with a state agency that requires equality among its workers by ensuring similarly employed individuals are compensated as equals.

Summary of Bill:

Sole Source, Convenience, and Emergency Contracts.

The type of contractor that qualifies as a sole source contractor is narrowed to be a contractor that is the only practical source of certain goods or services in general, rather than a contractor that is the only practical source of those goods and services at a particular location. The amount of time before the proposed starting date of the contract that an agency must file the contract with the DES and make the contract available for public inspection is extended to no less than 15 business days before the proposed starting date of the contract.

The definition of a convenience contract is modified to remove language authorizing a convenience contract to be established for use by a single specific agency. The ability for agencies approved to use a specified convenience contract as needed from time to time is removed and may only be used with the approval of the DES.

The time for an agency that makes an emergency purchase to submit its emergency contract to the DES is extended to 10 business days. The DES may authorize exceptions for filing requirements due to exigent circumstances.

Debarment.

The previously time-limited authority of the DES to fine or debar a contractor for failure to comply with a provision in a state master contract or other agreement with a state agency that requires equality in compensation among its workers is reinstated.

Appropriation: None.

Fiscal Note: Not requested.

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) The act improves competition, accountability, transparency, equity, and opportunity for small, diverse, and veteran-owned businesses. The changes to the sole source contracting criteria prevents agencies from over relying on the location clause for sole source contracts, thereby tightening the circumstances in which an agency awards a sole source contract. It also increases the timeframe that agency decisions are available to the public with regard to sole source contracts. This increases the existence of competitive solicitation in contracting. Requiring the DES to approve all convenience contracts ensures that agencies don't use convenience contracts to circumvent the competitive solicitation process. The act also lengthens the time for an agency to report their emergency purchases. The act repeals outdated and little used trade-war style provisions that punish business from other states that have in-state preferences. These statutes were enacted before the DES started engaging in best value procurement. Instead of penalizing those out-of-state businesses, current DES policy and strategy is to apply preferences to Washington's in-state businesses. This change is aligned with the DES's goal of increasing equity and supplier diversity in state contracting.

(Opposed) None.

Persons Testifying: Representative Chris Stearns, prime sponsor; and Jaime Rossman, Department of Enterprise Services.

Persons Signed In To Testify But Not Testifying: None.