
SUBSTITUTE HOUSE BILL 2452

State of Washington 62nd Legislature 2012 Regular Session

By House State Government & Tribal Affairs (originally sponsored by Representatives Wylie, Alexander, Kenney, Haigh, Hunt, Hudgins, Harris, McCoy, Ryu, Hasegawa, Springer, Billig, Maxwell, Upthegrove, and Ormsby; by request of Department of Enterprise Services)

READ FIRST TIME 01/31/12.

1 AN ACT Relating to centralizing the authority and responsibility
2 for the development, process, and oversight of state procurement of
3 goods and services; amending RCW 43.19.005, 43.19.725, and 43.19.727;
4 adding a new chapter to Title 39 RCW; recodifying RCW 43.19.1932,
5 43.19.530, 43.19.534, 43.19.535, 43.19.536, 43.19.538, 43.19.539,
6 43.19.700, 43.19.702, 43.19.704, 43.19.797, and 39.29.052; repealing
7 RCW 39.29.003, 39.29.006, 39.29.008, 39.29.009, 39.29.011, 39.29.016,
8 39.29.018, 39.29.020, 39.29.025, 39.29.040, 39.29.050, 39.29.055,
9 39.29.065, 39.29.068, 39.29.075, 39.29.080, 39.29.090, 39.29.100,
10 39.29.110, 39.29.120, 39.29.130, 39.29.900, 43.19.180, 43.19.185,
11 43.19.190, 43.19.1901, 43.19.1905, 43.19.19052, 43.19.1906, 43.19.1908,
12 43.19.1911, 43.19.1913, 43.19.1914, 43.19.1915, 43.19.1937, 43.19.1939,
13 and 43.19.200; and providing an effective date.

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

15 NEW SECTION. **Sec. 1.** INTENT. It is the intent of this chapter to
16 promote open competition and transparency for all contracts for goods
17 and services entered into by state agencies, unless specifically
18 exempted under this chapter. It is further the intent of this chapter
19 to centralize within one agency the authority and responsibility for

1 the development and oversight of policies related to state procurement
2 and contracting. To ensure the highest ethical standards, proper
3 accounting for contract expenditures, and for ease of public review, it
4 is further the intent to centralize the location of information about
5 state procurements and contracts. It is also the intent of the
6 legislature to provide state agency contract data to the public in a
7 searchable manner.

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

12 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
13 section apply throughout this chapter unless the context clearly
14 requires otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (9) "Debar" means to prohibit a contractor, individual, or other
21 entity from submitting a bid, having a bid considered, or entering into
22 a state contract during a specified period of time as set forth in a
23 debarment order.

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

25 (11) "Director" means the director of the department of enterprise
26 services.

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

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

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

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

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

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

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

9 (19) "Small business" means an in-state business, including a sole
10 proprietorship, corporation, partnership, or other legal entity, that:

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

13 (i) Fifty or fewer employees; or

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

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

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

23 (21) "Sweatshop labor" means all work or service extracted from or
24 performed by any person in violation of more than one law of the
25 country of manufacture governing wages, employee benefits, occupational
26 health, occupational safety, nondiscrimination, or freedom of
27 association.

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

29 NEW SECTION. **Sec. 3.** ETHICS IN PUBLIC CONTRACTING. (1)(a) A
30 state officer or employee of an agency who seeks to acquire goods or
31 services or who participates in those contractual matters is subject to
32 the requirements in RCW 42.52.150.

33 (b) A contractor who contracts with an agency to perform services
34 related to the acquisition of goods and services for or on behalf of
35 the state is subject to the requirements in RCW 42.52.150.

36 (2) No person or entity who seeks or may seek a contract with a
37 state agency may give, loan, transfer, or deliver to any person

1 something of economic value for which receipt of such item would cause
2 a state officer or employee to be in a violation of RCW 42.52.040,
3 42.52.110, 42.52.120, 42.52.140, or 42.52.150.

4 NEW SECTION. **Sec. 4.** RELEASE OF BID DOCUMENTS. (1) Records
5 related to state procurements are public records subject to disclosure
6 to the extent provided in chapter 42.56 RCW except as provided in
7 subsection (2) of this section.

8 (2) Bid submissions and bid evaluations are exempt from disclosure
9 until the agency announces the apparent successful bidder.

10 NEW SECTION. **Sec. 5.** PROHIBITION ON CERTAIN CONTRACTS. Agencies
11 that are authorized or directed to establish a board, commission,
12 council, committee, or other similar group made up of volunteers to
13 advise the activities and management of the agency are prohibited from
14 entering into contracts with any or all volunteer members as a means to
15 reimburse or otherwise pay members of such board, commission, council,
16 committee, or other similar group for the work performed as part of the
17 entity, except where payment is specifically authorized by statute.

18 NEW SECTION. **Sec. 6.** PROVISION OF GOODS AND SERVICES. (1) In
19 addition to the powers and duties provided in chapter 43.19 RCW, the
20 department shall make available goods and services to support state
21 agencies, and may enter into agreements with any other local or federal
22 governmental agency or entity or a public benefit nonprofit
23 organization, in compliance with RCW 39.34.055, and any tribes located
24 in the state, to furnish such products and services as deemed
25 appropriate by both parties.

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

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

4 NEW SECTION. **Sec. 7.** COOPERATIVE PURCHASING AUTHORIZED. (1) On
5 behalf of the state, the department may participate in, sponsor,
6 conduct, or administer a cooperative purchasing agreement for the
7 procurement of any goods or services with one or more states, state
8 agencies, local governments, local government agencies, federal
9 agencies, or tribes located in the state, in accordance with an
10 agreement entered into between the participants. The cooperative
11 purchasing may include, but is not limited to, joint or multiparty
12 contracts between the entities, and master contracts or convenience
13 contracts that are made available to other public agencies.

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

16 NEW SECTION. **Sec. 8.** CONVENIENCE CONTRACT. A convenience
17 contract is a contract for specific goods or services, or both, that is
18 solicited and established by the department in accordance with
19 procurement laws and rules on behalf of and for use by a specific
20 agency or group of agencies as needed from time to time. A convenience
21 contract is not available for general use and may only be used as
22 specified by the department.

23 NEW SECTION. **Sec. 9.** PROCUREMENT AGENCY. (1) The director is
24 responsible for the development and oversight of policy for the
25 procurement of goods and services by all state agencies under this
26 chapter.

27 (2) The director is authorized to adopt rules, policies, and
28 guidelines governing the procurement, contracting, and contract
29 management of any and all goods and services procured by state agencies
30 under this chapter.

31 (3) The director or designee is the sole authority to enter into
32 master contracts on behalf of the state.

33 NEW SECTION. **Sec. 10.** DIRECTOR'S DUTIES AND RESPONSIBILITIES
34 REGARDING PROCUREMENT. The director shall:

- 1 (1) Establish overall state policies, standards, and procedures
2 regarding the procurement of goods and services by all state agencies;
- 3 (2) Develop policies and standards for the use of credit cards or
4 similar methods to make purchases;
- 5 (3) Establish procurement processes for information technology
6 goods and services, using technology standards and policies established
7 by the office of the chief information officer under chapter 43.41A
8 RCW;
- 9 (4) Enter into contracts or delegate the authority to enter into
10 contracts on behalf of the state to facilitate the purchase, lease,
11 rent, or otherwise acquire all goods and services and equipment needed
12 for the support, maintenance, and use of all state agencies, except as
13 provided in section 11 of this act;
- 14 (5) Have authority to delegate to agencies authorization to
15 purchase goods and services. The authorization must specify
16 restrictions as to dollar amount or to specific types of goods and
17 services, based on a risk assessment process developed by the
18 department. Acceptance of the purchasing authorization by an agency
19 does not relieve the agency from conformance with this chapter or from
20 policies established by the director. Also, the director may not
21 delegate to a state agency the authorization to purchase goods and
22 services if the agency is not in substantial compliance with overall
23 procurement policies as established by the director;
- 24 (6) Develop procurement policies and procedures, such as unbundled
25 contracting and subcontracting, that encourage and facilitate the
26 purchase of goods and services from Washington small businesses to the
27 maximum extent practicable and consistent with international trade
28 agreement commitments;
- 29 (7) Develop and implement an enterprise system for electronic
30 procurement;
- 31 (8) Provide for a commodity classification system and provide for
32 the adoption of goods and services commodity standards;
- 33 (9) Establish overall state policy for compliance by all agencies
34 regarding:
- 35 (a) Food procurement procedures and materials that encourage and
36 facilitate the purchase of Washington grown food by state agencies and
37 institutions to the maximum extent practicable and consistent with
38 international trade agreement commitments; and

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

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

15 (11) Develop and enact rules to implement the provisions of this
16 chapter.

17 NEW SECTION. **Sec. 11.** EXEMPTIONS FROM CHAPTER. (1) The
18 provisions of this chapter do not apply in any manner to the operation
19 of the state legislature except as requested by the legislature.

20 (2) The provisions of this chapter do not apply to the contracting
21 for services and activities that are necessary to establish, operate,
22 or manage the state data center, including architecture, design,
23 engineering, installation, and operation of the facility, that are
24 approved by the technology services board or the acquisition of
25 proprietary software and information technology services necessary for
26 or part of the provision of services offered by the consolidated
27 technology services agency.

28 (3) Primary authority for the purchase of specialized equipment,
29 and instructional and research material, for their own use rests with
30 the institutions of higher education as defined in RCW 28B.10.016.

31 (4) Universities operating hospitals with approval from the
32 director, as the agent for state hospitals as defined in RCW 72.23.010,
33 and for health care programs provided in state correctional
34 institutions as defined in RCW 72.65.010(3) and veterans' institutions
35 as defined in RCW 72.36.010 and 72.36.070, may make purchases for
36 hospital operation by participating in contracts for materials,

1 supplies, and equipment entered into by nonprofit cooperative hospital
2 group purchasing organizations if documented to be more cost-effective.

3 (5) Primary authority for the purchase of materials, supplies, and
4 equipment, for resale to other than public agencies, rests with the
5 state agency concerned.

6 (6) The authority for the purchase of insurance and bonds rests
7 with the risk manager under RCW 43.19.769, except for institutions of
8 higher education that choose to exercise independent purchasing
9 authority under RCW 28B.10.029.

10 (7) The authority to purchase interpreter services and interpreter
11 brokerage services on behalf of limited-English speaking or sensory-
12 impaired applicants and recipients of public assistance rests with the
13 department of social and health services and the health care authority.

14 NEW SECTION. **Sec. 12.** TRAINING. (1) The department must provide
15 expertise and training on best practices for state procurement.

16 (2) The department must establish either training or certification
17 programs, or both, to ensure consistency in procurement practices for
18 employees authorized to perform procurement functions under the
19 provisions of this chapter.

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

29 NEW SECTION. **Sec. 13.** COMPETITIVE SOLICITATION. (1) Insofar as
30 practicable, all purchases of or contracts for goods and services must
31 be based on a competitive solicitation process. This process may
32 include electronic or web-based solicitations, bids, and signatures.
33 This requirement also applies to procurement of goods and services
34 executed by agencies under delegated authority granted in accordance
35 with section 10 of this act or under RCW 28B.10.029.

1 (2) Subsection (1) of this section applies to contract amendments
2 that substantially change the scope of work of the original contract or
3 substantially increase the value of the original contract.

4 NEW SECTION. **Sec. 14.** COMPETITIVE SOLICITATION--EXCEPTIONS. All
5 contracts must be entered into pursuant to competitive solicitation,
6 except for:

7 (1) Emergency contracts;

8 (2) Sole source contracts that comply with the provisions of
9 section 16 of this act;

10 (3) Direct buy purchases, as designated by the director. The
11 director shall establish policies to define criteria for direct buy
12 purchases. These criteria may be adjusted to accommodate special
13 market conditions and to promote market diversity for the benefit of
14 the citizens of the state of Washington;

15 (4) Purchases involving special facilities, services, or market
16 conditions, in which instances of direct negotiation is in the best
17 interest of the state;

18 (5) Purchases from master contracts established by the department
19 or an agency authorized by the department;

20 (6) Client services contracts;

21 (7) Other specific contracts or classes or groups of contracts
22 exempted from the competitive solicitation process when the director
23 determines that a competitive solicitation process is not appropriate
24 or cost-effective;

25 (8) Off-contract purchases of Washington grown food when such food
26 is not available from Washington sources through an existing contract.
27 However, Washington grown food purchased under this subsection must be
28 of an equivalent or better quality than similar food available through
29 the contract and must be able to be paid from the agency's existing
30 budget. This requirement also applies to purchases and contracts for
31 purchases executed by state agencies, including institutions of higher
32 education as defined in RCW 28B.10.016, under delegated authority
33 granted in accordance with this chapter or under RCW 28B.10.029;

34 (9) Contracts awarded to companies that furnish a service where the
35 tariff is established by the utilities and transportation commission or
36 other public entity;

1 (10) Intergovernmental agreements awarded to any governmental
2 entity, whether federal, state, or local and any department, division,
3 or subdivision thereof;

4 (11) Contracts for services that are necessary to the conduct of
5 collaborative research if the use of a specific contractor is mandated
6 by the funding source as a condition of granting funds;

7 (12) Contracts for architectural and engineering services as
8 defined in RCW 39.80.020, which shall be entered into under chapter
9 39.80 RCW;

10 (13) Contracts for the employment of expert witnesses for the
11 purposes of litigation; and

12 (14) Contracts for bank supervision authorized under RCW 30.38.040.

13 NEW SECTION. **Sec. 15.** EMERGENCY PURCHASES. (1) An agency may
14 make emergency purchases as defined in subsection (3) of this section.
15 When an emergency purchase is made, the agency head shall submit
16 written notification of the purchase within three business days of the
17 purchase to the director. This notification must contain a description
18 of the purchase, a description of the emergency and the circumstances
19 leading up to the emergency, and an explanation of why the
20 circumstances required an emergency purchase.

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

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

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

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

32 NEW SECTION. **Sec. 16.** SOLE SOURCE CONTRACTS. (1) Agencies must
33 submit sole source contracts to the department and make the contracts
34 available for public inspection not less than ten working days before
35 the proposed starting date of the contract. Agencies must provide
36 documented justification for sole source contracts to the department

1 when the contract is submitted, and must include evidence that the
2 agency posted the contract opportunity at a minimum on the state's
3 enterprise vendor registration and bid notification system.

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

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

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

14 NEW SECTION. **Sec. 17.** NOTIFICATIONS. (1) Agencies must provide
15 public notice for all competitive solicitations. Agencies must post
16 all contract opportunities on the state's enterprise vendor
17 registration and bid notification system. In addition, agencies may
18 notify contractors and potential bidders by sending notices by mail,
19 electronic transmission, newspaper advertisements, or other means as
20 may be appropriate.

21 (2) Agencies should try to anticipate changes in a requirement
22 before the bid submittal date and to provide reasonable notice to all
23 prospective bidders of any resulting modification or cancellation. If,
24 in the opinion of the agency, it is not possible to provide reasonable
25 notice, the submittal date for receipt of bids may be postponed and all
26 bidders notified.

27 NEW SECTION. **Sec. 18.** AWARD. (1)(a) After bids that are
28 submitted in response to a competitive solicitation process are
29 reviewed by the awarding agency, the awarding agency may:

30 (i) Reject all bids and rebid or cancel the competitive
31 solicitation;

32 (ii) Request best and final offers from responsive and responsible
33 bidders; or

34 (iii) Award the purchase or contract to the lowest responsive and
35 responsible bidder.

1 (b) The agency may award one or more contracts from a competitive
2 solicitation.

3 (2) In determining whether the bidder is a responsible bidder, the
4 agency must consider the following elements:

5 (a) The ability, capacity, and skill of the bidder to perform the
6 contract or provide the service required;

7 (b) The character, integrity, reputation, judgment, experience, and
8 efficiency of the bidder;

9 (c) Whether the bidder can perform the contract within the time
10 specified;

11 (d) The quality of performance of previous contracts or services;

12 (e) The previous and existing compliance by the bidder with laws
13 relating to the contract or services; and

14 (f) Such other information as may be secured having a bearing on
15 the decision to award the contract.

16 (3) In determining the lowest responsive and responsible bidder, an
17 agency may consider best value criteria, including but not limited to:

18 (a) Whether the bid satisfies the needs of the state as specified
19 in the solicitation documents;

20 (b) Whether the bid encourages diverse contractor participation;

21 (c) Whether the bid provides competitive pricing, economies, and
22 efficiencies;

23 (d) Whether the bid considers human health and environmental
24 impacts;

25 (e) Whether the bid appropriately weighs cost and noncost
26 considerations; and

27 (f) Life-cycle cost.

28 (4) The solicitation document must clearly set forth the
29 requirements and criteria that the agency will apply in evaluating bid
30 submissions.

31 (5) The awarding agency may at its discretion reject the bid of any
32 contractor who has failed to perform satisfactorily on a previous
33 contract with the state.

34 (6) After reviewing all bid submissions, an agency may enter into
35 negotiations with the lowest responsive and responsible bidder in order
36 to determine if the bid may be improved. An agency may not use this
37 negotiation opportunity to permit a bidder to change a nonresponsive
38 bid into a responsive bid.

1 (7) The procuring agency must enter into the state's enterprise
2 vendor and bid notification system the name of each bidder and an
3 indication as to the successful bidder.

4 NEW SECTION. **Sec. 19.** COMPLAINT AND PROTEST PROCESS. (1) All
5 agencies that have original or delegated procurement authority for
6 goods or services must have a clear and transparent complaint process.
7 The complaint process must provide for the complaint to be submitted
8 and response provided before the deadline for bid submissions.

9 (2) All agencies that have original or delegated procurement
10 authority for goods or services must have a clear and transparent
11 protest process. The protest process must include a protest period
12 after the apparent successful bidder is announced but before the
13 contract is signed.

14 (3) The director may grant authority for an agency to sign a
15 contract before the protest process is completed due to exigent
16 circumstances.

17 NEW SECTION. **Sec. 20.** PROCUREMENT MANAGEMENT. (1) The department
18 must adopt uniform policies and procedures for the effective and
19 efficient management of contracts by all state agencies. The policies
20 and procedures must, at a minimum, include:

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

23 (b) Model complaint and protest procedures;

24 (c) Alternative dispute resolution processes;

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

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

29 (f) Executing contracts using electronic signatures;

30 (g) Criteria for contract amendments;

31 (h) Postcontract procedures;

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

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

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

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

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

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

22 NEW SECTION. **Sec. 21.** SWEAT-FREE PROCUREMENT POLICY. (1) The

23 department shall establish a sweat-free procurement policy and code of
24 conduct that provides that apparel, garments and corresponding
25 accessories, equipment, materials, and supplies purchased by state
26 agencies be produced in workplaces free of sweatshop conditions.

27 (2) Every contract entered into by any state agency for the
28 procurement of apparel, garments or corresponding accessories,
29 equipment, materials, or supplies, other than procurement related to a
30 public works contract, shall require that a contractor certify that no
31 apparel, garments or corresponding accessories, equipment, materials,
32 or supplies furnished to or produced in whole or in part by sweatshop
33 labor, or with the benefit of sweatshop labor. The contractor shall
34 agree to comply with this provision of the contract. The contract may
35 not be awarded prior to receipt of the certification by the state
36 agency.

1 NEW SECTION. **Sec. 22.** BONDS--ANNUAL BID BOND, PERFORMANCE, AND
2 PROTEST. When any bid has been accepted, the agency may require of the
3 successful bidder a bond payable to the state in such amount with such
4 surety or sureties as determined by the agency, conditioned that he or
5 she will fully, faithfully, and accurately perform the terms of the
6 contract into which he or she has entered. Bidders who regularly do
7 business with the state shall be permitted to file with the agency an
8 annual performance bond in an amount established by the agency and such
9 annual bond shall be acceptable as surety in lieu of furnishing
10 individual bonds. The agency may also require bidders to provide bid
11 bonds conditioned that if a bidder is awarded the contract the bidder
12 will enter into and execute the contract, protest bonds, or other bonds
13 the agency deems necessary. Agencies must adhere to the policies
14 developed by the department regarding the use of protest bonds. All
15 bonds must be filed with the agency on a form acceptable to the agency.
16 Any surety issuing a bond must meet the qualification requirements
17 established by the agency.

18 NEW SECTION. **Sec. 23.** AUTHORITY TO DEBAR. (1)(a) The director
19 shall provide notice to the contractor of the director's intent to
20 debar with the specific reason for the debarment. The department must
21 establish the debarment process by rule.

22 (b) After reasonable notice to the contractor and reasonable
23 opportunity for that contractor to be heard, the director has the
24 authority to debar a contractor for cause from consideration for award
25 of contracts. The debarment must be for a period of not more than
26 three years.

27 (2) The director may debar a contractor based on a finding of one
28 or more of the following causes:

29 (a) Conviction for commission of a criminal offense as an incident
30 to obtaining or attempting to obtain a public or private contract or
31 subcontract, or in the performance of such contract or subcontract;

32 (b) Conviction under state or federal statutes of embezzlement,
33 theft, forgery, bribery, falsification or destruction of records,
34 receiving stolen property, or any other offense indicating a lack of
35 business integrity or business honesty that currently, seriously, and
36 directly affects responsibility as a state contractor;

1 (c) Conviction under state or federal antitrust statutes arising
2 out of the submission of bids or proposals;

3 (d) Violation of contract provisions, as set forth in this
4 subsection, of a character that is regarded by the director to be so
5 serious as to justify debarment action:

6 (i) Deliberate failure without good cause to perform in accordance
7 with the specifications or within the time limit provided in the
8 contract; or

9 (ii) A recent record of failure to perform or of unsatisfactory
10 performance in accordance with the terms of one or more contracts,
11 however the failure to perform or unsatisfactory performance caused by
12 acts beyond the control of the contractor may not be considered to be
13 a basis for debarment;

14 (e) Violation of ethical standards set forth in section 3 of this
15 act; and

16 (f) Any other cause the director determines to be so serious and
17 compelling as to affect responsibility as a state contractor, including
18 debarment by another governmental entity for any cause listed in
19 regulations.

20 (3) The director must issue a written decision to debar. The
21 decision must:

22 (a) State the reasons for the action taken; and

23 (b) Inform the debarred contractor of the contractor's rights to
24 judicial or administrative review.

25 NEW SECTION. **Sec. 24.** TRANSPARENCY. (1) Agencies must annually
26 submit to the department a list of all contracts that the agency has
27 entered into or renewed. "Contracts," for the purposes of this
28 section, does not include purchase orders. The department must
29 maintain a publicly available list of all contracts entered into by
30 agencies during each fiscal year, except that contracts for the
31 employment of expert witnesses for the purposes of litigation shall not
32 be made publicly available to the extent that information is exempt
33 from disclosure under state law. Except as otherwise exempt, the data
34 must identify the contracting agency, the contractor, the purpose of
35 the contract, effective dates and periods of performance, the cost of
36 the contract and funding source, any substantive modifications to the

1 contract, and whether the contract was competitively procured or
2 awarded on a sole source basis.

3 (2) The department may conduct audits of its master contracts and
4 convenience contracts to ensure that the contractor is in compliance
5 with the contract terms and conditions, including but not limited to
6 providing only the goods and services specified in the contract at the
7 contract price.

8 NEW SECTION. **Sec. 25.** CONTRACT AUDITS AND INVESTIGATIVE
9 FINDINGS--REPORT BY STATE AUDITOR AND ATTORNEY GENERAL. The state
10 auditor and the attorney general must annually by November 30th of each
11 year, provide a collaborative report of contract audit and
12 investigative findings, enforcement actions, and the status of agency
13 resolution to the governor and the policy and fiscal committees of the
14 legislature.

15 **Sec. 26.** RCW 43.19.005 and 2011 1st sp.s. c 43 s 103 are each
16 amended to read as follows:

17 (1) The department of enterprise services is created as an
18 executive branch agency. The department is vested with all powers and
19 duties transferred to it under chapter 43, Laws of 2011 1st sp. sess.
20 and such other powers and duties as may be authorized by law.

21 (2) In addition to the powers and duties as provided in chapter 43,
22 Laws of 2011 1st sp. sess., the department shall(+

23 ~~(a)~~) provide products and services to support state agencies, and
24 may enter into agreements with any other governmental entity or a
25 public benefit nonprofit organization, in compliance with RCW
26 39.34.055, to furnish such products and services as deemed appropriate
27 by both parties. The agreement shall provide for the reimbursement to
28 the department of the reasonable cost of the products and services
29 furnished. All governmental entities of this state may enter into such
30 agreements, unless otherwise prohibited(~~+~~and

31 ~~(b) Make available to state, local, and federal agencies, local
32 governments, and public benefit nonprofit corporations on a full cost-
33 recovery basis information and printing services to include equipment
34 acquisition assistance, including leasing, brokering, and establishing
35 master contracts. For the purposes of this section "public benefit
36 nonprofit corporation" means a public benefit nonprofit corporation as~~

1 ~~defined in RCW 24.03.005 that is receiving local, state, or federal~~
2 ~~funds either directly or through a public agency other than an Indian~~
3 ~~tribe or political subdivision of another state)).~~

4 **Sec. 27.** RCW 43.19.725 and 2011 c 358 s 2 are each amended to read
5 as follows:

6 (1) The department (~~of general administration~~) must develop a
7 model plan for state agencies to increase: (a) The number of small
8 businesses registering in the state's (~~common~~) enterprise vendor
9 registration and bid notification system; (b) the number of such
10 registered small businesses annually receiving state contracts for
11 goods and services purchased by the state; and (c) the percentage of
12 total state dollars spent for goods and services purchased from such
13 registered small businesses. The goal of the plan is to increase the
14 number of small businesses receiving state contracts as well as the
15 percentage of total state dollars spent for goods and services from
16 small businesses registered in the state's (~~common~~) enterprise vendor
17 registration and bid notification system by at least fifty percent in
18 fiscal year 2013, and at least one hundred percent in fiscal year 2015
19 over the baseline data reported for fiscal year 2011.

20 (2) (~~All state purchasing agencies~~) The department, the
21 department of transportation, and institutions of higher education as
22 defined in RCW 28B.10.016 may adopt the model plan developed by the
23 department (~~of general administration~~) under subsection (1) of this
24 section. (~~A state purchasing agency that~~) If the agency does not
25 adopt the model plan, it must establish and implement a plan consistent
26 with the goals of subsection (1) of this section.

27 (3) To facilitate the participation of small businesses in the
28 provision of goods and services to the state, including purchases under
29 chapters (~~39-29~~) 39.--- (the new chapter created in section 31 of
30 this act) and 43.105 RCW, the (~~state purchasing and material control~~)
31 director, under the powers granted (~~by RCW 43.19.190 through~~
32 ~~43.19.1939~~) under this chapter, and (~~all state purchasing agencies~~)
33 the department, the department of transportation, and institutions of
34 higher education as defined in RCW 28B.10.016 operating under delegated
35 authority granted under this chapter or RCW (~~43.19.190 or~~)
36 28B.10.029, must give technical assistance to small businesses
37 regarding the state bidding process. Such technical assistance shall

1 include providing opportunities for the agency to answer vendor
2 questions about the bid solicitation requirements in advance of the bid
3 due date and, upon request, holding a debriefing after the contract
4 award to assist the vendor in understanding how to improve his or her
5 responses for future competitive procurements.

6 (4)(a) (~~All state purchasing agencies~~) The department, the
7 department of transportation, and institutions of higher education as
8 defined in RCW 28B.10.016 must maintain records of state purchasing
9 contracts awarded to registered small businesses in order to track
10 outcomes and provide accurate, verifiable information regarding the
11 effects the technical assistance under subsection (3) of this section
12 is having on the number of small businesses annually receiving state
13 contracts for goods and services purchased by the state.

14 (b) The department (~~of general administration~~) may provide
15 assistance to other agencies attempting to maintain records of state
16 purchasing contracts awarded to registered small businesses for the
17 purposes described under (a) of this subsection.

18 (~~(5) The definitions in this subsection apply throughout this~~
19 ~~section and RCW 43.19.727 unless the context clearly requires~~
20 ~~otherwise.~~

21 (~~(a) "Small business" has the same meaning as defined in RCW~~
22 ~~39.29.006.~~

23 (~~(b) "State purchasing agencies" are limited to the department of~~
24 ~~general administration, the department of information services, the~~
25 ~~office of financial management, the department of transportation, and~~
26 ~~institutions of higher education.)~~)

27 **Sec. 28.** RCW 43.19.727 and 2011 c 358 s 3 are each amended to read
28 as follows:

29 (1) By November 15, 2013, and November 15th every two years
30 thereafter, (~~all state purchasing agencies~~) the department, the
31 department of transportation, and institutions of higher education as
32 defined in RCW 28B.10.016 shall submit a report to the appropriate
33 committees of the legislature providing verifiable information
34 regarding the effects the technical assistance under RCW 43.19.725(3)
35 is having on the number of small businesses annually receiving state
36 contracts for goods and services purchased by the state.

1 (2) By December 31, 2013, (~~all state purchasing agencies~~) the
2 department, the department of transportation, and institutions of
3 higher education as defined in RCW 28B.10.016 must use the web-based
4 information system created under subsection (3)(a) of this section to
5 capture the data required under subsection (3)(a) of this section.

6 (3)(a) The department (~~of general administration~~), in
7 consultation with (~~the department of information services,~~) the
8 department of transportation(~~(7)~~) and the department of commerce, must
9 develop and implement a web-based information system. The web-based
10 information system must be used to capture data, track outcomes, and
11 provide accurate and verifiable information regarding the effects the
12 technical assistance under RCW 43.19.725(3) is having on the number of
13 small businesses annually receiving state contracts for goods and
14 services purchased by the state. Such measurable data shall include,
15 but not be limited to: (i) The number of registered small businesses
16 that have been awarded state procurement contracts, (ii) the percentage
17 of total state dollars spent for goods and services purchased from
18 registered small businesses, and (iii) the number of registered small
19 businesses that have bid on but were not awarded state purchasing
20 contracts.

21 (b) (~~By October 1, 2011, the department of general administration,~~
22 ~~in collaboration with the department of information services and the~~
23 ~~department of transportation, shall submit a report to the appropriate~~
24 ~~committees of the legislature detailing the projected cost associated~~
25 ~~with the implementation and maintenance of the web-based information~~
26 ~~system.~~

27 (~~e~~) By September 1, 2012, the department (~~of general~~
28 ~~administration~~), in collaboration with (~~the department of information~~
29 ~~services and~~) the department of transportation, shall submit a report
30 to the appropriate committees of the legislature providing any
31 recommendations for needed legislation to improve the collection of
32 data required under (a) of this subsection.

33 (~~d~~) (c) By December 31, 2013, the department (~~of general~~
34 ~~administration~~) must make the web-based information system available
35 to all state purchasing agencies.

36 (~~e~~) (d) The department (~~of general administration~~) may also
37 make the web-based information system available to other agencies that

1 would like to use the system for the purposes of chapter 358, Laws of
2 2011.

3 NEW SECTION. **Sec. 29.** RCW 43.19.1932, 43.19.530, 43.19.534,
4 43.19.535, 43.19.536, 43.19.538, 43.19.539, 43.19.700, 43.19.702,
5 43.19.704, 43.19.797, and 39.29.052 are each recodified as sections in
6 chapter 39.--- RCW (the new chapter created in section 31 of this act).

7 NEW SECTION. **Sec. 30.** The following acts or parts of acts are
8 each repealed:

9 (1) RCW 39.29.003 (Intent) and 1998 c 101 s 1, 1993 c 433 s 1, 1987
10 c 414 s 1, & 1979 ex.s. c 61 s 1;

11 (2) RCW 39.29.006 (Definitions) and 2011 c 358 s 7, 2009 c 486 s 6,
12 2002 c 354 s 235, 1998 c 101 s 2, 1993 c 433 s 2, 1987 c 414 s 2, 1981
13 c 263 s 1, & 1979 ex.s. c 61 s 2;

14 (3) RCW 39.29.008 (Limitation on personal service contracts) and
15 1993 c 433 s 6;

16 (4) RCW 39.29.009 (Prohibition on certain personal service
17 contracts) and 2011 1st sp.s. c 21 s 60;

18 (5) RCW 39.29.011 (Competitive solicitation required--Exceptions)
19 and 2011 1st sp.s. c 43 s 522, 2011 c 358 s 4, 2009 c 486 s 7, 1998 c
20 101 s 3, & 1987 c 414 s 3;

21 (6) RCW 39.29.016 (Emergency contracts) and 2011 1st sp.s. c 43 s
22 523, 1998 c 101 s 4, 1996 c 288 s 29, & 1987 c 414 s 4;

23 (7) RCW 39.29.018 (Sole source contracts) and 2011 1st sp.s. c 43
24 s 524, 2009 c 486 s 8, 1998 c 101 s 5, 1996 c 288 s 30, 1993 c 433 s 5,
25 & 1987 c 414 s 5;

26 (8) RCW 39.29.020 (Compliance--Expenditure of funds prohibited--
27 Civil penalty) and 1987 c 414 s 6 & 1974 ex.s. c 191 s 2;

28 (9) RCW 39.29.025 (Amendments) and 2011 1st sp.s. c 43 s 525, 1998
29 c 101 s 6, 1996 c 288 s 31, & 1993 c 433 s 3;

30 (10) RCW 39.29.040 (Exemption of certain contracts) and 2002 c 260
31 s 11, 2002 c 200 s 2, 1998 c 101 s 7, 1996 c 2 s 19, 1995 c 80 s 1,
32 1987 c 414 s 7, 1986 c 33 s 3, & 1979 ex.s. c 61 s 4;

33 (11) RCW 39.29.050 (Contracts subject to requirements established
34 under office of minority and women's business enterprises) and 1983 c
35 120 s 12;

1 (12) RCW 39.29.055 (Contracts--Filing--Public inspection--Review
2 and approval--Effective date) and 2011 1st sp.s. c 43 s 526, 1998 c 101
3 s 8, 1996 c 288 s 32, & 1993 c 433 s 7;

4 (13) RCW 39.29.065 (Department of enterprise services to establish
5 policies and procedures--Adjustment of dollar thresholds) and 2011 1st
6 sp.s. c 43 s 527, 2009 c 486 s 9, 1998 c 101 s 9, & 1987 c 414 s 8;

7 (14) RCW 39.29.068 (Department of enterprise services to maintain
8 list of contracts--Report to legislature) and 2011 1st sp.s. c 43 s
9 528;

10 (15) RCW 39.29.075 (Summary reports on contracts) and 2011 1st
11 sp.s. c 43 s 529 & 1987 c 414 s 9;

12 (16) RCW 39.29.080 (Data generated under personal services
13 contracts) and 1997 c 373 s 1;

14 (17) RCW 39.29.090 (Contracts awarded by institutions of higher
15 education) and 2011 1st sp.s. c 43 s 530 & 1998 c 101 s 11;

16 (18) RCW 39.29.100 (Contract management--Uniform guidelines--
17 Guidebook) and 2011 1st sp.s. c 43 s 531 & 2002 c 260 s 7;

18 (19) RCW 39.29.110 (Use of guidelines--Report to department of
19 enterprise services) and 2011 1st sp.s. c 43 s 532 & 2002 c 260 s 8;

20 (20) RCW 39.29.120 (Contract management--Training--Risk-based
21 audits--Reports) and 2011 1st sp.s. c 43 s 533 & 2002 c 260 s 9;

22 (21) RCW 39.29.130 (Contract audits and investigative findings--
23 Report by state auditor and attorney general) and 2002 c 260 s 10;

24 (22) RCW 39.29.900 (Severability--1987 c 414) and 1987 c 414 s 13;

25 (23) RCW 43.19.180 (State purchasing and material control--
26 Director's responsibility) and 2011 1st sp.s. c 43 s 205, 2009 c 549 s
27 5063, 1975-'76 2nd ex.s. c 21 s 1, & 1965 c 8 s 43.19.180;

28 (24) RCW 43.19.185 (State purchasing and material control--System
29 for the use of credit cards or similar devices to be developed--Rules)
30 and 2011 1st sp.s. c 43 s 206, 1987 c 47 s 1, & 1982 1st ex.s. c 45 s
31 1;

32 (25) RCW 43.19.190 (State purchasing and material control--
33 Director's powers and duties--Rules) and 2011 1st sp.s. c 43 s 805,
34 2011 1st sp.s. c 43 s 207, 2002 c 200 s 3, 1995 c 269 s 1401, 1994 c
35 138 s 1, 1993 sp.s. c 10 s 2, 1993 c 379 s 102, & 1991 c 238 s 135;

36 (26) RCW 43.19.1901 ("Purchase" includes leasing or renting--
37 Electronic data processing equipment excepted) and 1987 c 434 s 23,
38 1983 c 3 s 102, & 1967 ex.s. c 104 s 1;

1 (27) RCW 43.19.1905 (Statewide policy for purchasing and material
2 control--Definitions) and 2011 1st sp.s. c 43 s 208, 2009 c 486 s 10,
3 & 2008 c 215 s 4;

4 (28) RCW 43.19.19052 (Initial purchasing and material control
5 policy--Legislative intent--Agency cooperation) and 2011 1st sp.s. c 43
6 s 209, 1998 c 245 s 54, 1995 c 269 s 1403, 1986 c 158 s 9, 1979 c 151
7 s 98, & 1975-'76 2nd ex.s. c 21 s 6;

8 (29) RCW 43.19.1906 (Competitive bids--Procedure--Exceptions) and
9 2011 1st sp.s. c 43 s 210, 2008 c 215 s 5, 2006 c 363 s 1, & 2002 c 332
10 s 4;

11 (30) RCW 43.19.1908 (Bids--Solicitation--Qualified bidders) and
12 2011 1st sp.s. c 43 s 211, 2009 c 486 s 11, 2006 c 363 s 2, 1994 c 300
13 s 2, & 1965 c 8 s 43.19.1908;

14 (31) RCW 43.19.1911 (Competitive bids--Notice of modification or
15 cancellation--Cancellation requirements--Lowest responsible bidder--
16 Preferential purchase--Life cycle costing) and 2006 c 363 s 3, 2005 c
17 204 s 5, 2003 c 136 s 6, 1996 c 69 s 2, 1989 c 431 s 60, 1983 c 183 s
18 4, 1980 c 172 s 8, & 1965 c 8 s 43.19.1911;

19 (32) RCW 43.19.1913 (Rejection of bid for previous unsatisfactory
20 performance) and 2011 1st sp.s. c 43 s 212 & 1965 c 8 s 43.19.1913;

21 (33) RCW 43.19.1914 (Low bidder claiming error--Prohibition on
22 later bid for same project) and 1996 c 18 s 7;

23 (34) RCW 43.19.1915 (Bidder's bond--Annual bid bond) and 2011 1st
24 sp.s. c 43 s 213, 2009 c 549 s 5064, & 1965 c 8 s 43.19.1915;

25 (35) RCW 43.19.1937 (Acceptance of benefits, gifts, etc.,
26 prohibited--Penalties) and 2009 c 549 s 5065, 1995 c 269 s 1405, 1975-
27 '76 2nd ex.s. c 21 s 13, & 1965 c 8 s 43.19.1937;

28 (36) RCW 43.19.1939 (Unlawful to offer, give, accept, benefits as
29 inducement for or to refrain from bidding--Penalty) and 2003 c 53 s 226
30 & 1965 c 8 s 43.19.1939; and

31 (37) RCW 43.19.200 (Duty of others in relation to purchases--
32 Emergency purchases--Written notifications) and 2011 1st sp.s. c 43 s
33 221, 2009 c 549 s 5066, 1986 c 158 s 10, 1984 c 102 s 2, 1971 c 81 s
34 111, & 1965 c 8 s 43.19.200.

35 NEW SECTION. **Sec. 31.** Sections 1 through 25 of this act
36 constitute a new chapter in Title 39 RCW.

1 NEW SECTION. **Sec. 32.** This act takes effect January 1, 2013.

2 NEW SECTION. **Sec. 33.** If any provision of this act or its
3 application to any person or circumstance is held invalid, the
4 remainder of the act or the application of the provision to other
5 persons or circumstances is not affected.

--- END ---