

SHB 1674 - H AMD 666

By Representative Santos

ADOPTED 02/12/2014

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 39.19.020 and 1996 c 69 s 4 are each amended to read
4 as follows:

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter.

7 (1) "Advisory committee" means the advisory committee on minority
8 and women's business enterprises.

9 (2) "Broker" means a person that provides a bona fide service, such
10 as professional, technical, consultant, brokerage, or managerial
11 services and assistance in the procurement of essential personnel,
12 facilities, equipment, materials, or supplies required for performance
13 of a contract.

14 (3) "Contractor" means an individual or entity granted state
15 certification and awarded either a direct contract with an agency or an
16 indirect contract as a subcontractor to perform a service or provide
17 goods.

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

22 (5) "Director" means the director of the office of minority and
23 women's business enterprises.

24 ((+4)) (6) "Educational institutions" means the state
25 universities, the regional universities, The Evergreen State College,
26 and the community colleges.

27 ((+5)) (7) "Goals" means annual overall agency goals, expressed as
28 a percentage of dollar volume, for participation by minority and women-
29 owned and controlled businesses and shall not be construed as a minimum
30 goal for any particular contract or for any particular geographical

1 area. It is the intent of this chapter that such overall agency goals
2 shall be achievable and shall be met on a contract-by-contract or
3 class-of-contract basis.

4 ~~((+6+))~~ (8) "Goods and/or services" includes professional services
5 and all other goods and services.

6 ~~((+7+))~~ (9) "Office" means the office of minority and women's
7 business enterprises.

8 ~~((+8+))~~ (10) "Person" includes one or more individuals,
9 partnerships, associations, organizations, corporations, cooperatives,
10 legal representatives, trustees and receivers, or any group of persons.

11 ~~((+9+))~~ (11) "Procurement" means the purchase, lease, or rental of
12 any goods or services.

13 ~~((+10+))~~ (12) "Public works" means all work, construction, highway
14 and ferry construction, alteration, repair, or improvement other than
15 ordinary maintenance, which a state agency or educational institution
16 is authorized or required by law to undertake.

17 ~~((+11+))~~ (13) "State agency" includes the state of Washington and
18 all agencies, departments, offices, divisions, boards, commissions, and
19 correctional and other types of institutions.

20 **Sec. 2.** RCW 39.19.060 and 1996 c 288 s 28 are each amended to read
21 as follows:

22 (1) Each state agency and educational institution shall comply with
23 the annual goals established for that agency or institution under this
24 chapter for public works and procuring goods or services. This chapter
25 applies to all public works and procurement by state agencies and
26 educational institutions, including all contracts and other procurement
27 under chapters 28B.10, 39.04, ~~((39.29))~~ 39.26, 43.19, and 47.28 RCW.

28 (2) Each state agency shall adopt a plan, developed in consultation
29 with the director and the advisory committee, to insure that minority
30 and women-owned businesses are afforded the maximum practicable
31 opportunity to directly and meaningfully participate in the execution
32 of public contracts for public works and goods and services. The plan
33 shall include specific measures the agency will undertake to increase
34 the participation of certified minority and women-owned businesses.

35 (3) Of all state agencies and educational institutions, the office
36 must annually identify those: (a) In the lowest quintile of
37 utilization of minority and women-owned contractors as a percentage of

1 all contracts issued by the agency; (b) in the lowest quintile of the
2 dollar value awarded to minority and women-owned contractors as a
3 percentage of the dollar value of all contracts issued by the agency;
4 and (c) that are performing significantly below their established
5 goals, as determined by the office. The office must meet with each
6 identified agency to review its plan and identify available tools and
7 actions for increasing participation.

8 (4) The office shall annually notify the governor, the state
9 auditor, and the joint legislative audit and review committee of all
10 agencies and educational institutions not in compliance with this
11 chapter.

12 **Sec. 3.** RCW 39.19.080 and 1987 c 328 s 5 are each amended to read
13 as follows:

14 ((+1)) A person, firm, corporation, business, union, or other
15 organization shall not:

16 ((+a)) (1) Prevent or interfere with a contractor's or
17 subcontractor's compliance with this chapter, or any rule adopted
18 under this chapter;

19 ((+b)) (2) Submit false or fraudulent information to the state
20 concerning compliance with this chapter or any such rule;

21 ((+c)) (3) Fraudulently obtain, retain, attempt to obtain or
22 retain, or aid another in fraudulently obtaining or retaining or
23 attempting to obtain or retain certification as a minority or women's
24 business enterprise for the purpose of this chapter;

25 ((+d)) (4) Knowingly make a false statement, whether by affidavit,
26 verified statement, report, or other representation, to a state
27 official or employee for the purpose of influencing the certification
28 or denial of certification of any entity as a minority or women's
29 business enterprise;

30 ((+e)) (5) Knowingly obstruct, impede, or attempt to obstruct or
31 impede any state official or employee who is investigating the
32 qualification of a business entity that has requested certification as
33 a minority or women's business enterprise;

34 ((+f)) (6) Fraudulently obtain, attempt to obtain, or aid another
35 person in fraudulently obtaining or attempting to obtain public moneys
36 to which the person is not entitled under this chapter; or

1 ~~((g))~~ (7) Knowingly make false statements that any entity is or
2 is not certified as a minority or women's business enterprise for
3 purposes of obtaining a contract governed by this chapter.

4 ~~((2) Any person or entity violating this chapter or any rule
5 adopted under this chapter shall be subject to the penalties in RCW
6 39.19.090. Nothing in this section prevents the state agency or
7 educational institution from pursuing such procedures or sanctions as
8 are otherwise provided by statute, rule, or contract provision.))~~

9 **Sec. 4.** RCW 39.19.090 and 1987 c 328 s 6 are each amended to read
10 as follows:

11 (1)(a) If a person, firm, corporation, or business does not comply
12 with any provision of this chapter other than RCW 39.19.080, or does
13 not comply with a contract requirement established under this chapter,
14 the state may ((withhold)) impose one or more of the following
15 penalties: Withholding payment, ((debar)) decertifying the contractor,
16 debaring the contractor, ((suspend, or terminate)) suspending or
17 terminating the contract ((and subject)), or subjecting the contractor
18 to civil penalties of up to ten percent of the amount of the contract
19 or up to five thousand dollars for each violation. ((The office shall
20 adopt, by rule, criteria for the imposition of penalties under this
21 section. Wilful))

22 (b) If a person, firm, corporation, or business commits any of the
23 activities prohibited in RCW 39.19.080, the state must impose one or
24 more of the following penalties: Withholding payment, decertifying the
25 contractor, debaring the contractor for a period between one and three
26 years, terminating the contract, or subjecting the contractor to civil
27 penalties of between two and ten percent of the amount of the contract
28 or between one and five thousand dollars for each violation.

29 (c) In addition to any other penalties imposed, willful repeated
30 violations, exceeding a single violation, ((may)) must disqualify the
31 contractor from further participation in state contracts for a period
32 of ((up to)) three years. A willful violation includes a conscious or
33 deliberate false statement, misrepresentation, omission, or concealment
34 of a material fact, with the specific intent of obtaining, continuing,
35 or increasing benefits under this chapter.

36 (2) An apparent low-bidder must be in compliance with the contract

1 provisions required under this chapter as a condition precedent to the
2 granting of a notice of award by any state agency or educational
3 institution.

4 (3) The office shall follow administrative procedures under chapter
5 34.05 RCW in determining a violation and imposing penalties under this
6 chapter. The office shall adopt, by rule, criteria for the imposition
7 of penalties under this section. The rule may incorporate the
8 debarment process authorized for the department of enterprise services
9 in RCW 39.26.200.

10 (4)(a) An investigation unit is established within the office for
11 the purpose of detecting and investigating fraud and violations of this
12 chapter. The office must employ qualified personnel for the unit.

13 (b) The director and the investigation unit are authorized to
14 receive criminal history record information that includes nonconviction
15 data for any purpose associated with the investigation of fraud or for
16 violations of this chapter. Dissemination or use of nonconviction data
17 for purposes other than that authorized in this section is prohibited.

18 (c) For the purpose of any investigation or proceeding under this
19 chapter, the director or the director's designee may administer oaths
20 and affirmations, subpoena witnesses, compel their attendance, take
21 evidence, and require the production of any books, papers,
22 correspondence, memoranda, agreements, or other documents or records
23 which the director or the director's designee deems relevant or
24 material to the inquiry.

25 (d) Subpoenas issued under this section may be enforced under RCW
26 34.05.588.

27 (e) The investigation unit must annually:

28 (i) Conduct a site review of a minimum of three percent of persons,
29 firms, corporations, or businesses awarded a contract under this
30 chapter;

31 (ii) Submit a response for all complaints for investigation made by
32 an external agency to the agency submitting the complaint;

33 (iii) Develop and implement a process for prioritizing and
34 conducting thorough investigations of persons, firms, corporations, or
35 businesses identified by an external complaint and determined to be the
36 highest priority for the agency; and

37 (iv) Develop and implement a process for prioritizing and

1 conducting thorough investigations of persons, firms, corporations, or
2 businesses internally identified and determined to be the highest
3 priority for the agency.

4 (5) The procedures and sanctions in this section are not exclusive;
5 nothing in this section prevents the state agency or educational
6 institution administering the contracts from pursuing such procedures
7 or sanctions as are otherwise provided by statute, rule, or contract
8 provision.

9 NEW SECTION. Sec. 5. A new section is added to chapter 39.19 RCW
10 to read as follows:

11 (1) The director or director's designee may apply for and obtain a
12 superior court order approving and authorizing a subpoena in advance of
13 its issuance. The application may be made in the county where the
14 subpoenaed person resides or is found, or the county where the
15 subpoenaed documents, records, or evidence are located, or in Thurston
16 county. The application must:

17 (a) State that an order is sought under this section;

18 (b) Adequately specify the documents, records, evidence, or
19 testimony; and

20 (c) Include a declaration made under oath that an investigation is
21 being conducted for a lawfully authorized purpose related to an
22 investigation within the office's authority and that the subpoenaed
23 documents, records, evidence, or testimony are reasonably related to an
24 investigation within the office's authority.

25 (2) When an application under this section is made to the
26 satisfaction of the court, the court must issue an order approving the
27 subpoena. An order under this subsection constitutes authority of law
28 for the agency to subpoena the documents, records, evidence, or
29 testimony.

30 (3) The director or director's designee may seek approval and a
31 court may issue an order under this section without prior notice to any
32 person, including the person to whom the subpoena is directed and the
33 person who is the subject of an investigation. An application for
34 court approval is subject to the fee and process set forth in RCW
35 36.18.012(3).

1 **Sec. 6.** RCW 39.19.200 and 1993 c 195 s 1 are each amended to read
2 as follows:

3 The minority and women's business enterprises account is created in
4 the custody of the state treasurer. All receipts from RCW 39.19.210,
5 39.19.220, and 39.19.230 and civil penalties imposed under RCW
6 39.19.090 shall be deposited in the account. Expenditures from the
7 account may be used only for the purposes defraying all or part of the
8 costs of the office in administering this chapter. Only the director
9 or the director's designee may authorize expenditures from the account.
10 Moneys in the account may be spent only after appropriation.

11 **Sec. 7.** RCW 39.19.250 and 2009 c 348 s 2 are each amended to read
12 as follows:

13 (1) For the purpose of annual reporting on progress required by
14 (~~section 1 of this act~~) RCW 39.19.020, each state agency and
15 educational institution shall submit data to the office and the office
16 of minority and women's business enterprises on the participation by
17 qualified minority and women-owned and controlled businesses in the
18 agency's or institution's contracts and other related information
19 requested by the director. The director of the office of minority and
20 women's business enterprises shall determine the content and format of
21 the data and the reporting schedule, which must be at least annually.

22 (2) The office must develop and maintain a list of contact people
23 at each state agency and educational institution (~~that is~~) who are
24 able to present to hearings of the appropriate committees of the
25 legislature its progress in carrying out the purposes of chapter 39.19
26 RCW.

27 (3) The office must submit a report aggregating the data received
28 from each state agency and educational institution, and the information
29 identified and actions taken under RCW 39.19.060(3) and 39.19.090(4),
30 to the legislature and the governor.

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

33 (1) RCW 39.19.100 (Enforcement by attorney general--Injunctive
34 relief) and 1987 c 328 s 12; and

35 (2) RCW 39.19.110 (Enforcement by attorney general--Investigative
36 powers) and 1987 c 328 s 13."

1 Correct the title.

EFFECT: Repeals provisions granting the Attorney General the authority to conduct investigations and initiate civil proceedings with respect to violations of the certification and bidding procedures of the Office of Minority and Women's Business Enterprises (OMWBE). Creates a process for the OMWBE director or his or her designee to apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance.

--- END ---