
HOUSE BILL 1897

State of Washington

65th Legislature

2017 Regular Session

By Representatives Gregerson, Santos, and Stanford

Read first time 02/02/17. Referred to Committee on Technology & Economic Development.

1 AN ACT Relating to ensuring fairness and compliance with public
2 works and procurement practices; amending RCW 39.19.020, 39.19.060,
3 39.19.080, 39.19.090, 39.19.200, 39.19.250, and 39.04.155; adding a
4 new section to chapter 39.19 RCW; prescribing penalties; and
5 repealing RCW 39.19.100 and 39.19.110.

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

7 **Sec. 1.** RCW 39.19.020 and 1996 c 69 s 4 are each amended to read
8 as follows:

9 ((Unless the context clearly requires otherwise,)) The
10 definitions in this section apply throughout this chapter unless the
11 context clearly requires otherwise.

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

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

19 (3) "Contractor" means an individual or entity granted state
20 certification and awarded either a direct contract with an agency or

1 an indirect contract as a subcontractor to perform a service or
2 provide goods.

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

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

9 ~~((4))~~ (6) "Educational institutions" means the state
10 universities, the regional universities, The Evergreen State College,
11 and the community colleges.

12 ~~((5))~~ (7) "Goals" means annual overall agency goals, expressed
13 as a percentage of dollar volume, for participation by minority and
14 women-owned and controlled businesses and shall not be construed as a
15 minimum goal for any particular contract or for any particular
16 geographical area. It is the intent of this chapter that such overall
17 agency goals shall be achievable and shall be met on a contract-by-
18 contract or class-of-contract basis.

19 ~~((6))~~ (8) "Goods and/or services" includes professional
20 services and all other goods and services.

21 ~~((7))~~ (9) "Office" means the office of minority and women's
22 business enterprises.

23 ~~((8))~~ (10) "Person" includes one or more individuals,
24 partnerships, associations, organizations, corporations,
25 cooperatives, legal representatives, trustees and receivers, or any
26 group of persons.

27 ~~((9))~~ (11) "Procurement" means the purchase, lease, or rental
28 of any goods or services.

29 ~~((10))~~ (12) "Public works" means all work, construction,
30 highway and ferry construction, alteration, repair, or improvement
31 other than ordinary maintenance, which a state agency or educational
32 institution is authorized or required by law to undertake.

33 ~~((11))~~ (13) "State agency" includes the state of Washington and
34 all agencies, departments, offices, divisions, boards, commissions,
35 and correctional and other types of institutions.

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

38 (1) Each state agency and educational institution shall comply
39 with the annual goals established for that agency or institution

1 under this chapter for public works and procuring goods or services.
2 This chapter applies to all public works and procurement by state
3 agencies and educational institutions, including all contracts and
4 other procurement under chapters 28B.10, 39.04, ~~((39.29))~~ 39.26,
5 43.19, and 47.28 RCW.

6 (2) Each state agency shall adopt a plan, developed in
7 consultation with the director and the advisory committee, to
8 ~~((insure))~~ ensure that minority and women-owned businesses are
9 afforded the maximum practicable opportunity to directly and
10 meaningfully participate in the execution of public contracts for
11 public works and goods and services. The plan shall include specific
12 measures the agency will undertake to increase the participation of
13 certified minority and women-owned businesses.

14 (3) Of all state agencies and educational institutions, the
15 office must annually identify those: (a) In the lowest quintile of
16 utilization of minority and women-owned contractors as a percentage
17 of all contracts issued by the agency; (b) in the lowest quintile of
18 the dollar value awarded to minority and women-owned contractors as a
19 percentage of the dollar value of all contracts issued by the agency;
20 and (c) that are performing significantly below their established
21 goals, as determined by the office. The office must meet with each
22 identified agency to review its plan and identify available tools and
23 actions for increasing participation.

24 (4) The office shall annually notify the governor, the state
25 auditor, and the joint legislative audit and review committee of all
26 agencies and educational institutions not in compliance with this
27 chapter.

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

30 ~~((1))~~ A person, firm, corporation, business, union, or other
31 organization shall not:

32 ~~((a))~~ (1) Prevent or interfere with a contractor's or
33 subcontractor's compliance with this chapter, or any rule adopted
34 under this chapter;

35 ~~((b))~~ (2) Submit false or fraudulent information to the state
36 concerning compliance with this chapter or any such rule;

37 ~~((c))~~ (3) Fraudulently obtain, retain, attempt to obtain or
38 retain, or aid another in fraudulently obtaining or retaining or

1 attempting to obtain or retain certification as a minority or women's
2 business enterprise for the purpose of this chapter;

3 ~~((d))~~ (4) Knowingly make a false statement, whether by
4 affidavit, verified statement, report, or other representation, to a
5 state official or employee for the purpose of influencing the
6 certification or denial of certification of any entity as a minority
7 or women's business enterprise;

8 ~~((e))~~ (5) Knowingly obstruct, impede, or attempt to obstruct or
9 impede any state official or employee who is investigating the
10 qualification of a business entity that has requested certification
11 as a minority or women's business enterprise;

12 ~~((f))~~ (6) Fraudulently obtain, attempt to obtain, or aid
13 another person in fraudulently obtaining or attempting to obtain
14 public moneys to which the person is not entitled under this chapter;
15 or

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

19 ~~((2) Any person or entity violating this chapter or any rule
20 adopted under this chapter shall be subject to the penalties in RCW
21 39.19.090. Nothing in this section prevents the state agency or
22 educational institution from pursuing such procedures or sanctions as
23 are otherwise provided by statute, rule, or contract provision.))~~

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

26 (1)(a) If a person, firm, corporation, or business does not
27 comply with any provision of this chapter ~~((or))~~ other than RCW
28 39.19.080, or does not comply with a contract requirement established
29 under this chapter, the state may ~~((withhold payment, debar the~~
30 ~~contractor, suspend, or terminate the contract and subject))~~ impose
31 one or more of the following penalties: Withholding payment,
32 decertifying the contractor, debaring the contractor, suspending or
33 terminating the contract, or subjecting the contractor to civil
34 penalties of up to ten percent of the amount of the contract or up to
35 five thousand dollars for each violation. ~~((The office shall adopt,~~
36 ~~by rule, criteria for the imposition of penalties under this section.~~
37 ~~Wilful))~~

38 (b) If a person, firm, corporation, or business commits any of
39 the activities prohibited in RCW 39.19.080, the state must impose one

1 or more of the following penalties: Withholding payment, decertifying
2 the contractor, debarring the contractor for a period between one and
3 three years, terminating the contract, or subjecting the contractor
4 to civil penalties of between two and ten percent of the amount of
5 the contract or between one and five thousand dollars for each
6 violation.

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

14 (2) An apparent low-bidder must be in compliance with the
15 contract provisions required under this chapter as a condition
16 precedent to the granting of a notice of award by any state agency or
17 educational institution.

18 (3) The office shall follow administrative procedures under
19 chapter 34.05 RCW in determining a violation and imposing penalties
20 under this chapter. The office shall adopt by rule criteria for the
21 imposition of penalties under this section. The rule may incorporate
22 the debarment process authorized for the department of enterprise
23 services in RCW 39.26.200.

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

28 (b) The director and the investigation unit are authorized to
29 receive criminal history record information that includes
30 nonconviction data for any purpose associated with the investigation
31 of fraud or for violations of this chapter. Dissemination or use of
32 nonconviction data for purposes other than that authorized in this
33 section is prohibited.

34 (c) For the purpose of any investigation or proceeding under this
35 chapter, the director or the director's designee may administer oaths
36 and affirmations, subpoena witnesses, compel their attendance, take
37 evidence, and require the production of any books, papers,
38 correspondence, memoranda, agreements, or other documents or records
39 that the director or the director's designee deems relevant or
40 material to the inquiry.

1 (d) Subpoenas issued under this section may be enforced under RCW
2 34.05.588.

3 (e) The investigation unit must annually:

4 (i) Conduct a site review of a minimum of three percent of
5 persons, firms, corporations, or businesses awarded a contract under
6 this chapter;

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

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

13 (iv) Develop and implement a process for prioritizing and
14 conducting thorough investigations of persons, firms, corporations,
15 or businesses internally identified and determined to be the highest
16 priority for the agency.

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

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

24 (1) The director or director's designee may apply for and obtain
25 a superior court order approving and authorizing a subpoena in
26 advance of its issuance. The application may be made in the county
27 where the subpoenaed person resides or is found, or the county where
28 the subpoenaed documents, records, or evidence are located, or in
29 Thurston county. The application must:

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

31 (b) Adequately specify the documents, records, evidence, or
32 testimony; and

33 (c) Include a declaration made under oath that an investigation
34 is being conducted for a lawfully authorized purpose related to an
35 investigation within the office's authority and that the subpoenaed
36 documents, records, evidence, or testimony are reasonably related to
37 an investigation within the office's authority.

38 (2) When an application under this section is made to the
39 satisfaction of the court, the court must issue an order approving

1 the subpoena. An order under this subsection constitutes authority of
2 law for the agency to subpoena the documents, records, evidence, or
3 testimony.

4 (3) The director or director's designee may seek approval and a
5 court may issue an order under this section without prior notice to
6 any person, including the person to whom the subpoena is directed and
7 the person who is the subject of an investigation. An application for
8 court approval is subject to the fee and process set forth in RCW
9 36.18.012(3).

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

12 The minority and women's business enterprises account is created
13 in the custody of the state treasurer. All receipts from RCW
14 39.19.210, 39.19.220, and 39.19.230 and civil penalties imposed under
15 RCW 39.19.090 shall be deposited in the account. Expenditures from
16 the account may be used only for the purposes defraying all or part
17 of the costs of the office in administering this chapter. Only the
18 director or the director's designee may authorize expenditures from
19 the account. Moneys in the account may be spent only after
20 appropriation.

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

23 (1) For the purpose of annual reporting on progress required by
24 (~~section 1 of this act~~) this chapter, each state agency and
25 educational institution shall submit data to the office and the
26 office of minority and women's business enterprises on the
27 participation by qualified minority and women-owned and controlled
28 businesses in the agency's or institution's contracts and other
29 related information requested by the director. The director of the
30 office of minority and women's business enterprises shall determine
31 the content and format of the data and the reporting schedule, which
32 must be at least annually.

33 (2) The office must develop and maintain a list of contact people
34 at each state agency and educational institution (~~that is~~) who are
35 able to present to hearings of the appropriate committees of the
36 legislature its progress in carrying out the purposes of chapter
37 39.19 RCW.

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

5 **Sec. 8.** RCW 39.04.155 and 2015 c 225 s 33 are each amended to
6 read as follows:

7 (1) This section provides uniform small works roster provisions
8 to award contracts for construction, building, renovation,
9 remodeling, alteration, repair, or improvement of real property that
10 may be used by state agencies and by any local government that is
11 expressly authorized to use these provisions. These provisions may be
12 used in lieu of other procedures to award contracts for such work
13 with an estimated cost of (~~three~~) five hundred thousand dollars or
14 less. The small works roster process includes the limited public
15 works process authorized under subsection (3) of this section and any
16 local government authorized to award contracts using the small works
17 roster process under this section may award contracts using the
18 limited public works process under subsection (3) of this section.

19 (2)(a) A state agency or authorized local government may create a
20 single general small works roster, or may create a small works roster
21 for different specialties or categories of anticipated work. Where
22 applicable, small works rosters may make distinctions between
23 contractors based upon different geographic areas served by the
24 contractor. The small works roster or rosters shall consist of all
25 responsible contractors who have requested to be on the list, and
26 where required by law are properly licensed or registered to perform
27 such work in this state. A state agency or local government
28 establishing a small works roster or rosters may require eligible
29 contractors desiring to be placed on a roster or rosters to keep
30 current records of any applicable licenses, certifications,
31 registrations, bonding, insurance, or other appropriate matters on
32 file with the state agency or local government as a condition of
33 being placed on a roster or rosters. At least once a year, the state
34 agency or local government shall publish in a newspaper of general
35 circulation within the jurisdiction a notice of the existence of the
36 roster or rosters and solicit the names of contractors for such
37 roster or rosters. In addition, responsible contractors shall be
38 added to an appropriate roster or rosters at any time they submit a
39 written request and necessary records. Master contracts may be

1 required to be signed that become effective when a specific award is
2 made using a small works roster.

3 (b) A state agency establishing a small works roster or rosters
4 shall adopt rules implementing this subsection. A local government
5 establishing a small works roster or rosters shall adopt an ordinance
6 or resolution implementing this subsection. Procedures included in
7 rules adopted by the department of enterprise services in
8 implementing this subsection must be included in any rules providing
9 for a small works roster or rosters that is adopted by another state
10 agency, if the authority for that state agency to engage in these
11 activities has been delegated to it by the department of enterprise
12 services under chapter 43.19 RCW. An interlocal contract or agreement
13 between two or more state agencies or local governments establishing
14 a small works roster or rosters to be used by the parties to the
15 agreement or contract must clearly identify the lead entity that is
16 responsible for implementing the provisions of this subsection.

17 (c) Procedures shall be established for securing telephone,
18 written, or electronic quotations from contractors on the appropriate
19 small works roster to assure that a competitive price is established
20 and to award contracts to the lowest responsible bidder, as defined
21 in RCW 39.04.010. Invitations for quotations shall include an
22 estimate of the scope and nature of the work to be performed as well
23 as materials and equipment to be furnished. However, detailed plans
24 and specifications need not be included in the invitation. This
25 subsection does not eliminate other requirements for architectural or
26 engineering approvals as to quality and compliance with building
27 codes. Quotations may be invited from all appropriate contractors on
28 the appropriate small works roster. As an alternative, quotations
29 (~~may~~) must be invited from at least five contractors on the
30 appropriate small works roster who have indicated the capability of
31 performing the kind of work being contracted, in a manner that will
32 equitably distribute the opportunity among the contractors on the
33 appropriate roster. However, if the estimated cost of the work is
34 from one hundred fifty thousand dollars to (~~three~~) five hundred
35 thousand dollars, a state agency or local government that chooses to
36 solicit bids from less than all the appropriate contractors on the
37 appropriate small works roster must also notify the remaining
38 contractors on the appropriate small works roster that quotations on
39 the work are being sought. The government has the sole option of
40 determining whether this notice to the remaining contractors is made

1 by: (i) Publishing notice in a legal newspaper in general circulation
2 in the area where the work is to be done; (ii) mailing a notice to
3 these contractors; or (iii) sending a notice to these contractors by
4 facsimile or other electronic means. For purposes of this subsection
5 (2)(c), "equitably distribute" means that a state agency or local
6 government soliciting bids may not favor certain contractors on the
7 appropriate small works roster over other contractors on the
8 appropriate small works roster who perform similar services.

9 (d) A contract awarded from a small works roster under this
10 section need not be advertised.

11 (e) Immediately after an award is made, the bid quotations
12 obtained shall be recorded, open to public inspection, and available
13 by ~~((telephone inquiry))~~ electronic request.

14 (f) For projects awarded under the small works roster process
15 established under this subsection, a state agency or authorized local
16 government may waive the retainage requirements of RCW
17 60.28.011(1)(a), thereby assuming the liability for contractor's
18 nonpayment of: (i) Laborers, mechanics, subcontractors,
19 materialpersons, and suppliers; and (ii) taxes, increases, and
20 penalties under Titles 50, 51, and 82 RCW that may be due from the
21 contractor for the project. However, the state agency or local
22 government has the right of recovery against the contractor for any
23 payments made on the contractor's behalf. Recovery of unpaid wages
24 and benefits are the first priority for actions filed against the
25 retainage.

26 (3)(a) In lieu of awarding contracts under subsection (2) of this
27 section, a state agency or authorized local government may award a
28 contract for work, construction, alteration, repair, or improvement
29 projects estimated to cost less than ~~((thirty-five))~~ one hundred
30 fifty thousand dollars using the limited public works process
31 provided under this subsection. Public works projects awarded under
32 this subsection are exempt from the other requirements of the small
33 works roster process provided under subsection (2) of this section
34 and are exempt from the requirement that contracts be awarded after
35 advertisement as provided under RCW 39.04.010.

36 (b) For limited public works projects, a state agency or
37 authorized local government shall solicit electronic or written
38 quotations from a minimum of three contractors from the appropriate
39 small works roster and shall award the contract to the lowest
40 responsible bidder as defined under RCW 39.04.010. After an award is

1 made, the quotations shall be open to public inspection and available
2 by electronic request. A state agency or authorized local government
3 (~~shall attempt to~~) must equitably distribute opportunities for
4 limited public works projects (~~equitably~~) among contractors willing
5 to perform in the geographic area of the work. A state agency or
6 authorized local government shall maintain a list of the contractors
7 contacted and the contracts awarded during the previous twenty-four
8 months under the limited public works process, including the name of
9 the contractor, the contractor's registration number, the amount of
10 the contract, a brief description of the type of work performed, and
11 the date the contract was awarded. For limited public works projects,
12 a state agency or authorized local government may waive the payment
13 and performance bond requirements of chapter 39.08 RCW and the
14 retainage requirements of chapter 60.28 RCW, thereby assuming the
15 liability for the contractor's nonpayment of laborers, mechanics,
16 subcontractors, materialpersons, suppliers, and taxes imposed under
17 Title 82 RCW that may be due from the contractor for the limited
18 public works project, however the state agency or authorized local
19 government shall have the right of recovery against the contractor
20 for any payments made on the contractor's behalf.

21 (4) The breaking of any project into units or accomplishing any
22 projects by phases is prohibited if it is done for the purpose of
23 avoiding the maximum dollar amount of a contract that may be let
24 using the small works roster process or limited public works process.

25 ~~(5)((a) A state agency or authorized local government may use
26 the limited public works process of subsection (3) of this section to
27 solicit and award small works roster contracts to small businesses
28 that are registered contractors with gross revenues under one million
29 dollars annually as reported on their federal tax return.~~

30 ~~(b) A state agency or authorized local government may adopt
31 additional procedures to encourage small businesses that are
32 registered contractors with gross revenues under two hundred fifty
33 thousand dollars annually as reported on their federal tax returns to
34 submit quotations or bids on small works roster contracts.~~

35 ~~(6) As used in this section,~~) A state agency or authorized local
36 government may use the limited public works process in this section
37 to solicit and award small works roster contracts to minibusinesses
38 and microbusinesses as defined under RCW 39.26.010 that are
39 registered contractors.

1 (6) The department of enterprise services shall work with the
2 municipal research and services center to notify local governments
3 authorized to use small works rosters of this authority and to
4 provide guidance on how to use the authority. The guidance may take
5 the form of a manual provided to local governments.

6 (7) The definitions in this subsection apply throughout this
7 section unless the context clearly requires otherwise.

8 (a) "Equitably distributes" means that a state agency or
9 authorized local government may not favor certain contractors on the
10 appropriate small works roster over other contractors on the same
11 roster who perform similar services.

12 (b) "State agency" means the department of enterprise services,
13 the state parks and recreation commission, the department of natural
14 resources, the department of fish and wildlife, the department of
15 transportation, any institution of higher education as defined under
16 RCW 28B.10.016, and any other state agency delegated authority by the
17 department of enterprise services to engage in construction,
18 building, renovation, remodeling, alteration, improvement, or repair
19 activities.

20 (8) The joint legislative audit and review committee must review
21 the implementation of the changes to the small works roster and
22 limited public works processes in this section and report to the
23 governor and appropriate committees of the legislature by December 1,
24 2018. The report must include recommendations for the furtherance of
25 practices set out in this section and identify:

26 (a) Progress in the rates of participation of certain groups
27 including, qualified minority and women-owned and controlled
28 businesses, minibusinesses, and microbusinesses in the small works
29 roster and limited public works contracting processes; and

30 (b) Barriers to improving the participation rate of qualified
31 minority and women-owned and controlled businesses and the growth of
32 minibusinesses and microbusinesses in the small works roster and
33 limited public works contracting processes.

34 NEW SECTION. Sec. 9. The following acts or parts of acts are
35 each repealed:

36 (1) RCW 39.19.100 (Enforcement by attorney general—Injunctive
37 relief) and 1987 c 328 s 12; and

1 (2) RCW 39.19.110 (Enforcement by attorney general—Investigative
2 powers) and 1987 c 328 s 13.

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