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**HOUSE BILL 1844**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Representatives Chandler, Hudgins, Smith, Tarleton, and Lekanoff

AN ACT Relating to requiring modular contracting for information technology procurement by state agencies; amending RCW 39.26.090, 39.26.125, and 39.26.100; adding a new section to chapter 39.26 RCW; and adding new sections to chapter 43.105 RCW.

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

**Sec.**  RCW 39.26.090 and 2012 c 224 s 10 are each amended to read as follows:

The director shall:

(1) Establish overall state policies, standards, and procedures regarding the procurement of goods and services by all state agencies;

(2) Develop policies and standards for the use of credit cards or similar methods to make purchases;

(3) Establish procurement processes for information technology goods and services, including processes consistent with sections 2 and 3 of this act, using technology standards and policies established by the office of the chief information officer under chapter ((~~43.41A~~)) 43.105 RCW;

(4) Enter into contracts or delegate the authority to enter into contracts on behalf of the state to facilitate the purchase, lease, rent, or otherwise acquire all goods and services and equipment needed for the support, maintenance, and use of all state agencies, except as provided in RCW 39.26.100;

(5) Have authority to delegate to agencies authorization to purchase goods and services. The authorization must specify restrictions as to dollar amount or to specific types of goods and services, based on a risk assessment process developed by the department. Acceptance of the purchasing authorization by an agency does not relieve the agency from conformance with this chapter or from policies established by the director. Also, the director may not delegate to a state agency the authorization to purchase goods and services if the agency is not in substantial compliance with overall procurement policies as established by the director;

(6) Develop procurement policies and procedures, such as unbundled contracting and subcontracting, that encourage and facilitate the purchase of goods and services from Washington small businesses, microbusinesses, and minibusinesses, and minority and women-owned businesses to the maximum extent practicable and consistent with international trade agreement commitments;

(7) Develop and implement an enterprise system for electronic procurement;

(8) Provide for a commodity classification system and provide for the adoption of goods and services commodity standards;

(9) Establish overall state policy for compliance by all agencies regarding:

(a) Food procurement procedures and materials that encourage and facilitate the purchase of Washington grown food by state agencies and institutions to the maximum extent practicable and consistent with international trade agreement commitments; and

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

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

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

NEW SECTION. **Sec.**  A new section is added to chapter 39.26 RCW to read as follows:

(1) State agencies must use the modular contracting method for the procurement of information technology systems with an estimated cost in excess of one million dollars, except for the procurement of commercially available off-the-shelf products such as monitors, tablets, or commercially available off-the-shelf software. The modular contracting method is an acquisition strategy that breaks up large, complex procurements into multiple tightly scoped projects that are procured in increments to implement information technology systems in successive, interoperable segments.

(2) Under modular contracting, the procurement of an information technology system must be divided into several smaller procurement increments that:

(a) Comply with the statewide information technology standards under chapter 43.105 RCW;

(b) Are easier to manage individually than one comprehensive procurement;

(c) Address complex information technology objectives incrementally;

(d) Provide for delivery, implementation, and testing of workable systems or solutions in discrete increments, each of which comprises a system or solution that is not dependent on a subsequent increment in order to perform its principal functions;

(e) Provide an opportunity for subsequent increments of the acquisition to take advantage of any evolution in technology or needs that occurs during conduct of the earlier increments;

(f) Conform to the state agency's master information technology architecture; and

(g) Perform consistently with the performance requirements of the completed, overall system within which the information technology will function and meets interface requirements with succeeding increments.

(3) Terms contained in the contracts awarded under this section and section 3 of this act must:

(a) Be simplified and easily understood by a reasonable person;

(b) Require that custom developed software be open source code, except when meeting this requirement will substantially reduce the number of bidders or substantially increase the cost of the project;

(c) Require that the state maintain ownership of all data and application programming interface;

(d) Specify that additional costs due to a change in the scope of a project shall be the sole responsibility of the vendor when the changes do not materially impact the project deadline or the cost of the project;

(e) Require that the vendor comply with content and data protection security and infrastructure system security policies adopted pursuant to section 5 of this act; and

(f) Require a process for including end user customer involvement in the development of the project, including the solicitation and incorporation of end user customer feedback whenever reasonably appropriate.

(4) To the maximum extent practicable, a state agency should award a contract for an increment of an information technology procurement within one hundred eighty days after the solicitation is issued and, if the contract for that increment cannot be awarded within that period, the state agency should consider cancellation of the increment.

(5) The information technology provided for in a contract for procurement of information technology should be delivered within eighteen months after the solicitation resulting in award of the contract was issued.

NEW SECTION. **Sec.**  A new section is added to chapter 43.105 RCW to read as follows:

(1) State agencies may establish a prequalified vendor pool for each information technology project for which the agency is procuring goods or services using modular contracting. A prequalified vendor pool consists of a prequalified group of vendors that the state agency may choose to issue solicitation for bids to throughout the project. Vendors are accepted into a prequalified vendor pool in accordance with requirements established under subsection (2) of this section.

(2) The office and the department of enterprise services shall collaborate to establish requirements for the selection process of vendors for prequalified vendor pools. The office and the department of enterprise services may consider the following factors, where applicable, when establishing such requirements:

(a) A requirement that vendors build a prototype of the project within a defined period of time and submit the working prototype to the agency;

(b) A requirement that proposals adhere to coding and design best practices;

(c) A requirement that software, including any prototype submitted, is open source code;

(d) A limit for the number of vendors selected for a prequalified vendor pool; and

(e) Any other criteria that the office and the department of enterprise services deem are necessary.

**Sec.**  RCW 39.26.125 and 2012 c 224 s 14 are each amended to read as follows:

All contracts must be entered into pursuant to competitive solicitation, except for:

(1) Emergency contracts;

(2) Sole source contracts that comply with the provisions of RCW 39.26.140;

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

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

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

(6) Client services contracts;

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

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

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

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

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

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

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

(14) Contracts for bank supervision authorized under RCW ((~~30.38.040~~)) 30A.38.040; and

(15) Contracts awarded pursuant to a solicitation for bid made to a prequalified vendor pool under section 3 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 43.105 RCW to read as follows:

The office shall establish policies for the procurement of information technology systems pursuant to sections 2 and 3 of this act to ensure the security of the infrastructure system contracted for, and protection of the data and content stored, transacted, or processed in the infrastructure system purchased.

**Sec.**  RCW 39.26.100 and 2018 c 253 s 4 are each amended to read as follows:

(1) The provisions of this chapter do not apply in any manner to the operation of the state legislature except as requested by the legislature.

(2) Except for sections 2 and 3 of this act, the provisions of this chapter do not apply to the contracting for services, equipment, and activities that are necessary to establish, operate, or manage the state data center, including architecture, design, engineering, installation, and operation of the facility, that are approved by the technology services board or the acquisition of proprietary software, equipment, and information technology services necessary for or part of the provision of services offered by the consolidated technology services agency.

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

(4) Universities operating hospitals with approval from the director, as the agent for state hospitals as defined in RCW 72.23.010, and for health care programs provided in state correctional institutions as defined in RCW 72.65.010(3) and veterans' institutions as defined in RCW 72.36.010 and 72.36.070, may make purchases for hospital operation by participating in contracts for materials, supplies, and equipment entered into by nonprofit cooperative hospital group purchasing organizations if documented to be more cost-effective.

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

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

(7) The provisions of this chapter do not apply to information technology purchases by state agencies, other than institutions of higher education and agencies of the judicial branch, if (a) the purchase is less than one hundred thousand dollars, (b) the initial purchase is approved by the chief information officer of the state, and (c) the agency director and the chief information officer of the state jointly prepare a public document providing a detailed justification for the expenditure.

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