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**SENATE BILL 5935**

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

**By** Senator Ericksen

AN ACT Relating to complete equity in Washington state; amending RCW 28B.20.744, 39.10.430, 39.10.450, and 49.04.100; adding a new section to chapter 49.60 RCW; creating new sections; repealing RCW 49.60.400 and 49.60.401; providing for submission of this act to a vote of the people; and declaring an emergency.

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

NEW SECTION. **Sec.**  This act may be known and cited as the complete equity act.

NEW SECTION. **Sec.**  A new section is added to chapter 49.60 RCW to read as follows:

(1) The state shall not discriminate against, or grant preferential treatment to, any individual, group, or tribal government on the basis of race, gender, religion, national origin, sexual preference, tribal status, federal mandate, or treaty status with the federal government in the operation of public employment, public education, public contracting, business opportunity, tax status, or special preferences awarded by the federal, state, or local government. This shall include but is not limited to government preferences, education admittance standards, regulations, permitting, hunting, fishing, land access, casino operations, or gas tax receipts.

(2) For the purposes of this section, "state" includes, but is not necessarily limited to, the state itself, any city, county, public college or university, community college, school district, special district, or other political subdivision or governmental instrumentality of or within the state.

(3) The remedies available for violations of this section are the same, regardless of the injured party's race, gender, religion, national origin, sexual preference, tribal status, federal mandate, or treaty status with the federal government, as are otherwise available for violations of Washington antidiscrimination law.

(4) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law, the United States Constitution, or the Washington state Constitution, the section shall be implemented to the maximum extent that federal law, the United States Constitution, and the Washington state Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.

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

(1)RCW 49.60.400 (Discrimination, preferential treatment prohibited) and 2013 c 242 s 7 & 1999 c 3 s 1; and

(2)RCW 49.60.401 (Short title—1999 c 3) and 1999 c 3 s 2.

**Sec.**  RCW 28B.20.744 and 2017 c 124 s 1 are each amended to read as follows:

(1) This section provides an alternative process for awarding contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of university buildings and facilities in which critical patient care or highly specialized medical research is located. These provisions may be used, in lieu of other procedures to award contracts for such work, when the estimated cost of the work is equal to or less than five million dollars and the project involves construction, renovation, remodeling, or alteration of improvements within a building that is used directly for critical patient care or highly specialized medical research.

(2) The university may create a single critical patient care or specialized medical research facilities roster or may create multiple critical patient care or specialized medical research facilities rosters for different trade specialties or categories of anticipated work. At least once a year, the university shall publish in a newspaper of general circulation and with the office of minority and women's business enterprises, a notice of the existence of the roster or rosters and solicit a statement of qualifications from contractors who wish to be on the roster or rosters of prime contractors. In addition, qualified contractors shall be added to the roster or rosters at any time they submit a written request, necessary records, and meet the qualifications established by the university. The university may require eligible contractors desiring to be placed on a roster to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the university with input from the women-owned and minority-owned business community as a condition of being placed on a roster or rosters. Placement on a roster shall be on the basis of qualifications.

(3) The public solicitation of qualifications shall include but not be limited to:

(a) A description of the types of projects to be completed and where possible may include programmatic, performance, and technical requirements and specifications;

(b) The reasons for using the critical patient care and specialized medical research roster process;

(c) A description of the qualifications to be required of a contractor, including submission of an accident prevention program;

(d) A description of the process the university will use to evaluate qualifications, including evaluation factors and the relative weight of factors;

(e) The form of the contract to be awarded;

(f) A description of the administrative process by which the required qualifications, evaluation process, and project types may be appealed; and

(g) A description of the administrative process by which decisions of the university may be appealed.

(4) The university shall establish a committee that includes one representative from the minority-owned business community and one representative from the women-owned business community to evaluate the contractors submitting qualifications. Evaluation criteria for selection of the contractor or contractors to be included on a roster shall include, but not be limited to:

(a) Ability of a contractor's professional personnel;

(b) A contractor's past performance on similar projects, including but not limited to medical facilities, and involving either negotiated work or other public works contracts;

(c) The contractor's ability to meet time and budget requirements;

(d) The contractor's ability to provide preconstruction services, as appropriate;

(e) The contractor's capacity to successfully complete the project;

(f) The contractor's approach to executing projects;

(g) The contractor's approach to safety and the contractor's safety history;

(h) The contractor's record of performance, integrity, judgment, and skills;

(i) The contractor's record of including office of minority and women's business enterprises-certified, minority, women, veteran, and small businesses; and

(j) The contractor's past history of use of small business entities, disadvantaged business enterprises, minority business enterprises, women business enterprises, and minority women business enterprises over the last five years on projects of five million dollars or less and the contractor's proposed outreach plan and commitment to include such firms.

(5) Contractors meeting the evaluation committee's criteria for selection must be placed on the applicable roster or rosters.

(6) When a project is selected for delivery through this roster process, the university must establish a procedure for securing written quotations from all contractors on a roster to assure that a competitive price is established. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. Plans and specifications must be included in the invitation but may not be detailed. Award of a project must be made to the responsible bidder submitting the lowest responsive bid.

(7) The university shall make an effort to solicit proposals from certified minority or certified woman-owned contractors. The university business diversity program shall establish aspirational goals for small business entities, disadvantaged business enterprises, minority business enterprises, women business enterprises, and minority women business enterprises for each roster based on the projected subcontracting opportunities and to the extent permitted by the ((~~Washington state civil rights~~)) complete equity act, ((~~RCW 49.60.400~~)) section 2 of this act.

(8) Beginning in September 2010 and every other September thereafter, the university shall provide a report to the capital projects advisory review board which must, at a minimum, include a list of rosters used, contracts awarded, office of minority and women's business enterprises-certified small business entities, disadvantaged business enterprises, veterans, and women and minority-owned business use rates on the projects.

(9) Beginning in September 2015 and every September thereafter, the university shall report to the office of minority and women's business enterprises and to the appropriate legislative fiscal committees the number of qualified women and minority-owned business contractors on the roster or rosters and the number of contracts awarded to women and minority-owned businesses.

(10) The university shall require contractors to solicit proposals from office of minority and women's business enterprises-certified firms.

**Sec.**  RCW 39.10.430 and 2007 c 494 s 402 are each amended to read as follows:

(1) Job order contracts shall be awarded through a competitive process using public requests for proposals.

(2) The public body shall make an effort to solicit proposals from certified minority or certified woman-owned contractors to the extent permitted by the ((~~Washington state civil rights~~)) complete equity act, ((~~RCW 49.60.400~~)) section 2 of this act.

(3) The public body shall publish, at least once in a statewide publication and legal newspaper of general circulation published in every county in which the public works project is anticipated, a request for proposals for job order contracts and the availability and location of the request for proposal documents. The public body shall ensure that the request for proposal documents at a minimum includes:

(a) A detailed description of the scope of the job order contract including performance, technical requirements and specifications, functional and operational elements, minimum and maximum work order amounts, duration of the contract, and options to extend the job order contract;

(b) The reasons for using job order contracts;

(c) A description of the qualifications required of the proposer;

(d) The identity of the specific unit price book to be used;

(e) The minimum contracted amount committed to the selected job order contractor;

(f) A description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors. The public body shall ensure that evaluation factors include, but are not limited to, proposal price and the ability of the proposer to perform the job order contract. In evaluating the ability of the proposer to perform the job order contract, the public body may consider: The ability of the professional personnel who will work on the job order contract; past performance on similar contracts; ability to meet time and budget requirements; ability to provide a performance and payment bond for the job order contract; recent, current, and projected workloads of the proposer; location; and the concept of the proposal;

(g) The form of the contract to be awarded;

(h) The method for pricing renewals of or extensions to the job order contract;

(i) A notice that the proposals are subject to RCW 39.10.470; and

(j) Other information relevant to the project.

(4) A public body shall establish a committee to evaluate the proposals. After the committee has selected the most qualified finalists, the finalists shall submit final proposals, including sealed bids based upon the identified unit price book. Such bids may be in the form of coefficient markups from listed price book costs. The public body shall award the contract to the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors published in the public request for proposals and will notify the board of the award of the contract.

(5) The public body shall provide a protest period of at least ten business days following the day of the announcement of the apparent successful proposal to allow a protester to file a detailed statement of the grounds of the protest. The public body shall promptly make a determination on the merits of the protest and provide to all proposers a written decision of denial or acceptance of the protest. The public body shall not execute the contract until two business days following the public body's decision on the protest.

(6) The requirements of RCW 39.30.060 do not apply to requests for proposals for job order contracts.

**Sec.**  RCW 39.10.450 and 2012 c 102 s 2 are each amended to read as follows:

(1) The maximum dollar amount for a work order is three hundred fifty thousand dollars.

(2) All work orders issued for the same project shall be treated as a single work order for purposes of the dollar limit on work orders.

(3) No more than twenty percent of the dollar value of a work order may consist of items of work not contained in the unit price book.

(4) Any new permanent, enclosed building space constructed under a work order shall not exceed two thousand gross square feet.

(5) A public body may issue no work orders under a job order contract until it has approved, in consultation with the office of minority and women's business enterprises or the equivalent local agency, a plan prepared by the job order contractor that equitably spreads certified women and minority business enterprise subcontracting opportunities, to the extent permitted by the ((~~Washington state civil rights~~)) complete equity act, ((~~RCW 49.60.400~~)) section 2 of this act, among the various subcontract disciplines.

(6) For purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW, each work order issued shall be treated as a separate contract. The alternate filing provisions of RCW 39.12.040(2) apply to each work order that otherwise meets the eligibility requirements of RCW 39.12.040(2).

(7) The job order contract shall not be used for the procurement of architectural or engineering services not associated with specific work orders. Architectural and engineering services shall be procured in accordance with RCW 39.80.040.

**Sec.**  RCW 49.04.100 and 2001 c 204 s 7 are each amended to read as follows:

As provided by the rules adopted by the apprenticeship council, apprenticeship programs entered into under authority of this chapter with five or more apprentices shall conform with 29 C.F.R. Part 30 to the extent required by federal law while advancing the nondiscriminatory principles of the ((~~Washington state civil rights~~)) complete equity act, ((~~RCW 49.60.400~~)) section 2 of this act.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

NEW SECTION. **Sec.**  This act constitutes an alternative to Initiative 1000. The secretary of state is directed to place this act on the ballot in conjunction with Initiative 1000 at the next general election.

This act shall continue in force and effect until the secretary of state certifies the election results on this act. If affirmatively approved at the general election, this act shall continue in effect thereafter.

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