
SENATE BILL 5655

State of Washington

66th Legislature

2019 Regular Session

By Senators Hunt, Van De Wege, Das, Keiser, Palumbo, Saldaña, Mullet, and Walsh

1 AN ACT Relating to protecting taxpayers by providing for
2 accountability and transparency in government contracting; amending
3 RCW 41.06.142 and 39.26.200; adding a new section to chapter 39.26
4 RCW; and creating new sections.

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

6 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
7 increase transparency and accountability of public contracts by
8 requiring better evaluation of contract performance. Such evaluation
9 should include an assessment of whether decisions to "contract out"
10 government services to the private sector are achieving their stated
11 objectives. In addition, it is the intent of the legislature to
12 ensure that public contractors given access to state resources are
13 held to ethical standards consistent with public values.

14 The legislature finds that prior to July 1, 2005, state agencies
15 and institutions of higher education were prohibited from contracting
16 out for services regularly and historically provided by classified
17 state employees. Effective July 1, 2005, the personnel system reform
18 act of 2002 lifted the prohibition, authorizing state agencies and
19 institutions of higher education to contract out for services
20 customarily and historically provided by classified state employees.
21 It is therefore the intent of the legislature that this act be

1 applied only to government services that have, since July 1, 2005,
2 been customarily and historically performed by state employees in the
3 classified service under chapter 41.06 RCW.

4 **Sec. 2.** RCW 41.06.142 and 2011 1st sp.s. c 43 s 408 are each
5 amended to read as follows:

6 (1) Any department, agency, or institution of higher education
7 may (~~purchase~~) contract for services, including services that,
8 since July 1, 2005, have been customarily and historically provided
9 by employees in the classified service under this chapter, by
10 contracting with individuals, nonprofit organizations, businesses,
11 employee business units, or other entities if the following criteria
12 are met:

13 (a) A comprehensive impact assessment is completed by the agency,
14 department, or institution of higher education to assist it in
15 determining whether the decision to contract out is beneficial.

16 (i) The comprehensive impact assessment must include at a minimum
17 the following analysis:

18 (A) An estimate of the cost of performance of the service by
19 employees, including the fully allocated costs of the service, the
20 cost of the employees' salaries and benefits, space, equipment,
21 materials, and other costs necessary to perform the function. The
22 estimate must not include the state's indirect overhead costs unless
23 those costs can be attributed directly to the function in question
24 and would not exist if that function were not performed in state
25 service;

26 (B) An estimate of the cost of performance of the services if
27 contracted out, including the cost of administration of the program
28 and allocating sufficient employee staff time and resources to
29 monitor the contract and ensure its proper performance by the
30 contractor;

31 (C) The reason for proposing to contract out, including the
32 objective the agency would like to achieve; and

33 (D) The reasons for the determination made under (e) of this
34 subsection.

35 (ii) When the contract will result in termination of state
36 employees or elimination of state positions, the comprehensive impact
37 assessment may also include an assessment of the potential adverse
38 impacts on the public from outsourcing the contract, such as loss of
39 employment, effect on social services and public assistance programs,

1 economic impacts on local businesses and local tax revenues, and
2 environmental impacts;

3 (b) The invitation for bid or request for proposal contains
4 measurable standards for the performance of the contract;

5 ~~((b))~~ (c) Employees ((in the classified service)) whose
6 positions or work would be displaced by the contract are provided an
7 opportunity to offer alternatives to purchasing services by contract
8 and, if these alternatives are not accepted, compete for the contract
9 under competitive contracting procedures in subsection ((4)) (7) of
10 this section;

11 ~~((c) The contract with an entity other than an employee business~~
12 ~~unit includes a provision requiring the entity to consider employment~~
13 ~~of state employees who may be displaced by the contract;))~~

14 (d) The department, agency, or institution of higher education
15 has established a contract monitoring process to measure contract
16 performance, costs, service delivery quality, and other contract
17 standards, and to cancel contracts that do not meet those standards;
18 and

19 (e) The department, agency, or institution of higher education
20 has determined that the contract results in savings or efficiency
21 improvements. The contracting agency, department, or institution of
22 higher education must consider the consequences and potential
23 mitigation of improper or failed performance by the contractor.

24 (2) (a) The agency, department, or institution of higher education
25 must post on its web site the request for proposal, the contract or a
26 statement that the agency, department, or institution of higher
27 education did not move forward with contracting out, and the
28 comprehensive impact assessment pursuant to subsection (1) of this
29 section.

30 (b) The agency, department, or institution of higher education
31 must maintain the information in (a) of this subsection in its files
32 in accordance with the record retention schedule under RCW 40.14.060.

33 (3) Every five years or upon completion of the contract,
34 whichever comes first, the agency, department, or institution of
35 higher education must prepare and maintain in the contract file a
36 report, which must include at a minimum the following information:

37 (a) Documentation of the contractor's performance as measured by
38 the itemized performance standards;

39 (b) Itemization of any contract extensions or change orders that
40 resulted in a change in the dollar value or cost of the contract; and

1 (c) A report of any remedial actions that were taken to enforce
2 compliance with the contract, together with an estimate of the cost
3 incurred by the agency, department, or institution of higher
4 education in enforcing such compliance.

5 (4) In addition to any other terms required by law, the terms of
6 any agreement to contract out a service pursuant to this section must
7 include terms that address the following:

8 (a) The contract's contract management provision must allow
9 review of the contractor's performance;

10 (b) The contract's termination clauses must allow termination of
11 the contract if the contractor fails to meet the terms of the
12 contract, including failure to meet performance standards or failure
13 to provide the services at the contracted price;

14 (c) The contract's damages provision must allow recovery of
15 direct damages and, when applicable, indirect damages that the
16 agency, department, or institution of higher education incurs due to
17 the contractor's breach of the agreement;

18 (d) If the contractor will be using a subcontractor for
19 performance of services under the contract, the contract must allow
20 the agency, department, or institution of higher education to obtain
21 information about the subcontractor, as applicable to the performance
22 of services under the agreement; and

23 (e) A provision requiring the contractor to consider employment
24 of employees who may be displaced by the contract, if the contract is
25 with an entity other than an employee business unit.

26 (5) Any provision contrary to or in conflict with this section in
27 any collective bargaining agreement in effect on July 1, 2005, is not
28 effective beyond the expiration date of the agreement.

29 ~~((3))~~ (6) Contracting for services that is expressly mandated
30 by the legislature, including contracts for fire suppression awarded
31 by the department of natural resources under RCW 76.04.181, or was
32 authorized by law prior to July 1, 2005, including contracts and
33 agreements between public entities, shall not be subject to the
34 processes set forth in subsections (1) ~~((7))~~ through (4), ~~((7))~~, and
35 ~~((5))~~ (9) of this section.

36 ~~((4))~~ (7) Competitive contracting shall be implemented as
37 follows:

38 (a) At least ninety days prior to the date the contracting
39 agency, department, or institution of higher education requests bids
40 from private entities for a contract for services provided by

1 ((classified)) employees, the contracting agency, department, or
2 institution of higher education shall notify the ((classified))
3 employees whose positions or work would be displaced by the contract.
4 The employees shall have sixty days from the date of notification to
5 offer alternatives to purchasing services by contract, and the
6 agency, department, or institution of higher education shall consider
7 the alternatives before requesting bids.

8 (b) If the employees decide to compete for the contract, they
9 shall notify the contracting agency, department, or institution of
10 higher education of their decision. Employees must form one or more
11 employee business units for the purpose of submitting a bid or bids
12 to perform the services.

13 (c) The department of enterprise services, with the advice and
14 assistance of the office of financial management, shall develop and
15 make available to employee business units training in the bidding
16 process and general bid preparation.

17 (d) The director of enterprise services, with the advice and
18 assistance of the office of financial management, shall, by rule,
19 establish procedures to ensure that bids are submitted and evaluated
20 in a fair and objective manner and that there exists a competitive
21 market for the service. Such rules shall include, but not be limited
22 to: (i) Prohibitions against participation in the bid evaluation
23 process by employees who prepared the business unit's bid or who
24 perform any of the services to be contracted; (ii) provisions to
25 ensure no bidder receives an advantage over other bidders and that
26 bid requirements are applied equitably to all parties; and (iii)
27 procedures that require the contracting agency, department, or
28 institution of higher education to receive complaints regarding the
29 bidding process and to consider them before awarding the contract.
30 Appeal of an agency's, department's, or institution of higher
31 education's actions under this subsection is an adjudicative
32 proceeding and subject to the applicable provisions of chapter 34.05
33 RCW, the administrative procedure act, with the final decision to be
34 rendered by an administrative law judge assigned under chapter 34.12
35 RCW.

36 (e) An employee business unit's bid must include the fully
37 allocated costs of the service, including the cost of the employees'
38 salaries and benefits, space, equipment, materials, and other costs
39 necessary to perform the function. An employee business unit's cost
40 shall not include the state's indirect overhead costs unless those

1 costs can be attributed directly to the function in question and
2 would not exist if that function were not performed in state service.

3 (f) A department, agency, or institution of higher education may
4 contract with the department of enterprise services to conduct the
5 bidding process.

6 ~~((5))~~ (8) The department of enterprise services must maintain
7 uniform policies and procedures for the effective and efficient
8 management of contracts by all state agencies, pursuant to RCW
9 39.26.180. The department of enterprise services must also include in
10 the policy and procedures maintained:

11 (a) In the precontract procedures for selecting potential
12 contractors based on qualifications and ability to perform,
13 procedures to ensure compliance with chapter 39.19 RCW, providing for
14 participation of minority and women-owned businesses;

15 (b) In model contract terms to ensure contract performance and
16 compliance with state and federal standards, terms to facilitate
17 recovery of the costs of employee staff time that must be expended to
18 bring a contract into substantial compliance, and terms required
19 under subsection (4) of this section;

20 (c) In the procedures and criteria for terminating contracts,
21 procedures and criteria for terminating performance-based contracts
22 that are not achieving performance standards; and

23 (d) A requirement that agencies, departments, and institutions of
24 higher education monitor performance-based contracts to ensure that
25 all aspects of the contract are being properly performed and that
26 performance standards are being achieved.

27 (9)(a) As used in this section:

28 ~~((a))~~ (i) "Employee business unit" means a group of employees
29 who perform services to be contracted under this section and who
30 submit a bid for the performance of those services under subsection
31 ~~((4))~~ (7) of this section.

32 ~~((b))~~ (ii) "Indirect overhead costs" means the pro rata share
33 of existing agency administrative salaries and benefits, and rent,
34 equipment costs, utilities, and materials associated with those
35 administrative functions.

36 ~~((e))~~ (iii) "Competitive contracting" means the process by
37 which ~~((classified))~~ employees of a department, agency, or
38 institution of higher education compete with businesses, individuals,
39 nonprofit organizations, or other entities for contracts authorized
40 by subsection (1) of this section.

1 ~~((6))~~ (b) Unless otherwise specified, for the purpose of this
2 act, "employee" means state employees in the classified service under
3 this chapter except employees in the Washington management service as
4 defined under RCW 41.06.022 and 41.06.500.

5 (10) The processes set forth in subsections (1)(a), (2), (3), and
6 (4) of this section do not apply to contracts awarded for the
7 purposes of or by the department of transportation, or to contracts
8 with an estimated cost of contract performance of twenty thousand
9 dollars or less.

10 (11) The processes set forth in subsections (1)~~((7))~~ through (4),
11 (7), and ~~((5))~~ (9) of this section do not apply to:

12 (a) RCW 74.13.031~~((5))~~ (6);

13 (b) Contracts awarded on major projects, as defined by the office
14 of financial management, for services related to construction,
15 architecture, engineering, and land surveying; and

16 (c) The acquisition of printing services by a state agency~~((; and~~
17 ~~(c) Contracting for services or activities by the department of~~
18 ~~enterprise services under RCW 43.19.008 and the department may~~
19 ~~continue to contract for such services and activities after June 30,~~
20 ~~2018)).~~

21 ~~((7))~~ (12) The processes set forth in subsections (1)~~((7))~~
22 through (4), (7), and ~~((5))~~ (9) of this section do not apply to the
23 consolidated technology services agency when contracting for services
24 or activities as follows:

25 (a) Contracting for services and activities that are necessary to
26 establish, operate, or manage the state data center, including
27 architecture, design, engineering, installation, and operation of the
28 facility that are approved by the technology services board created
29 in RCW ~~((43.41A.070))~~ 43.105.285.

30 (b) Contracting for services and activities recommended by the
31 chief information officer through a business plan and approved by the
32 technology services board created in RCW ~~((43.41A.070))~~ 43.105.285.

33 **Sec. 3.** RCW 39.26.200 and 2017 3rd sp.s. c 1 s 996 are each
34 amended to read as follows:

35 (1)(a) The director shall provide notice to the contractor of the
36 director's intent to either fine or debar with the specific reason
37 for either the fine or debarment. The department must establish the
38 debarment and fining processes by rule.

1 (b) After reasonable notice to the contractor and reasonable
2 opportunity for that contractor to be heard, the director has the
3 authority to debar a contractor for cause from consideration for
4 award of contracts. The debarment must be for a period of not more
5 than three years.

6 (2) The director may either fine or debar a contractor based on a
7 finding of one or more of the following causes:

8 (a) Conviction for commission of a criminal offense as an
9 incident to obtaining or attempting to obtain a public or private
10 contract or subcontract, or in the performance of such contract or
11 subcontract;

12 (b) Conviction or a final determination in a civil action under
13 state or federal statutes of fraud, embezzlement, theft, forgery,
14 bribery, falsification or destruction of records, receiving stolen
15 property, violation of the federal false claims act, 31 U.S.C. Sec.
16 3729 et seq., or the state medicaid fraud false claims act, chapter
17 74.66 RCW, or any other offense indicating a lack of business
18 integrity or business honesty that currently, seriously, and directly
19 affects responsibility as a state contractor;

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

22 (d) Two or more violations within the previous five years of the
23 (~~federal~~) national labor relations act as determined by the
24 national labor relations board or court of competent jurisdiction;

25 (e) Violation of contract provisions, as set forth in this
26 subsection, of a character that is regarded by the director to be so
27 serious as to justify debarment action:

28 (i) Deliberate failure without good cause to perform in
29 accordance with the specifications or within the time limit provided
30 in the contract; or

31 (ii) A recent record of failure to perform or of unsatisfactory
32 performance in accordance with the terms of one or more contracts,
33 however the failure to perform or unsatisfactory performance caused
34 by acts beyond the control of the contractor may not be considered to
35 be a basis for debarment;

36 (f) Violation of ethical standards set forth in RCW 39.26.020;

37 (g) Any other cause the director determines to be so serious and
38 compelling as to affect responsibility as a state contractor,
39 including debarment by another governmental entity for any cause
40 listed in regulations; and

1 (h) During the 2017-2019 fiscal biennium, the failure to comply
2 with a provision in a state master contract or other agreement with a
3 state agency that requires equality among its workers by ensuring
4 similarly employed individuals are compensated as equals.

5 (3) The director must issue a written decision to debar. The
6 decision must:

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

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

10 NEW SECTION. **Sec. 4.** A new section is added to chapter 39.26
11 RCW to read as follows:

12 An agency, department, or institution of higher education that
13 intends to contract out, or does contract out, for services that,
14 since July 1, 2005, have been customarily and historically performed
15 by employees in the classified service defined in RCW 41.06.020 must
16 follow procedures and meet criteria established under RCW 41.06.142.

17 NEW SECTION. **Sec. 5.** This act is prospective and applies only
18 to contracts commenced on or after the effective date of this
19 section. Contracts in effect prior to the effective date of this
20 section remain unaffected by this act through their expiration date.

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