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**SENATE BILL 5458**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senator Wagoner

AN ACT Relating to public contracts with small businesses; amending RCW 43.19.725, 43.19.727, and 39.80.040; amending 2011 c 358 s 1 (uncodified); adding a new section to chapter 39.24 RCW; adding a new section to chapter 28B.10 RCW; adding a new section to chapter 39.04 RCW; and adding a new section to chapter 39.26 RCW.

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

**Sec.**  2011 c 358 s 1 (uncodified) is amended to read as follows:

The legislature finds that it is in the state's economic interest and serves a public purpose to promote and facilitate the fullest possible participation by Washington businesses of all sizes in the process by which goods and services are purchased by the state. The legislature further finds that large businesses have the resources to participate fully and effectively in the state's purchasing system, and because of many factors, including economies of scale, the purchasing system tends to create a preference in favor of large businesses and to disadvantage small businesses. The legislature intends, therefore, to assist, to the maximum extent possible, small businesses to participate in order to enhance and preserve competitive enterprise and to ensure that small businesses have a fair opportunity to be awarded contracts or subcontracts for goods and services purchased by the state. The legislature recognizes the need to increase accountability for the state's procurement and contracting practices. The legislature, therefore, intends to ((~~encourage~~)) require all state agencies to maintain records of state purchasing contracts awarded to registered small businesses. The legislature further recognizes that access to a modernized system that categorizes a state business by such factors as its type and size, is an essential tool for receiving accurate and verifiable information regarding the effects any technical assistance is having on the number of small businesses annually receiving state contracts for goods and services purchased by the state.

**Sec.**  RCW 43.19.725 and 2012 c 224 s 26 are each amended to read as follows:

(1) The department must develop a model plan for state agencies to increase: (a) The number of small businesses registering in the state's enterprise vendor registration and bid notification system; (b) the number of such registered small businesses annually receiving state contracts ((~~for goods and services purchased by the state~~)); and (c) the percentage of total state ((~~dollars spent for goods and services purchased~~)) contracts from such registered small businesses. The goal of the plan is to increase the number of small businesses receiving state contracts as well as the percentage of total state ((~~dollars spent for goods and services~~)) contracts from small businesses registered in the state's enterprise vendor registration and bid notification system ((~~by at least fifty percent in fiscal year 2013, and at least one hundred percent in fiscal year 2015 over the baseline data reported for fiscal year 2011~~)).

(2) The department, the department of transportation, and institutions of higher education as defined in RCW 28B.10.016 may adopt the model plan developed by the department under subsection (1) of this section. If the agency does not adopt the model plan, it must establish and implement a plan consistent with the goals of subsection (1) of this section.

(3) To facilitate the participation of small businesses in ((~~the provision of goods and services to the state~~)) public contracts, including purchases under chapters 39.04, 39.26, and 43.105 RCW, the director, under the powers granted under this chapter, and the department, the department of transportation, and institutions of higher education as defined in RCW 28B.10.016 operating under delegated authority granted under this chapter or RCW 28B.10.029, must give technical assistance to small businesses regarding the state bidding process. Such technical assistance shall include providing opportunities for the agency to answer vendor questions about the bid solicitation requirements in advance of the bid due date and, upon request, holding a debriefing after the contract award to assist the vendor in understanding how to improve his or her responses for future competitive procurements.

(4)(a) The department, the department of transportation, and institutions of higher education as defined in RCW 28B.10.016 must maintain records of state purchasing contracts awarded to registered small businesses in order to track outcomes and provide accurate, verifiable information regarding the effects the technical assistance under subsection (3) of this section is having on the number of small businesses annually receiving state contracts ((~~for goods and services purchased by the state~~)).

(b) The department may provide assistance to other agencies attempting to maintain records of state purchasing contracts awarded to registered small businesses for the purposes described under (a) of this subsection.

(c) The department may establish policies regarding agency reporting of public contracts to gather the necessary data to establish how many contracts are being awarded to small businesses under section 4 of this act.

(d) The department shall collaborate with and may assist agencies in implementing outreach to small businesses.

(5) For the purposes of this section:

(a) "Agency" means any state agencies, departments, offices, divisions, boards, commissions, institutions of higher education as defined in RCW 28B.10.016, and correctional and other types of institutions.

(b) "Small business" has the same meaning as defined in RCW 39.26.010.

**Sec.**  RCW 43.19.727 and 2012 c 224 s 27 are each amended to read as follows:

(1) By November 15, 2013, and November 15th every two years thereafter, the department, in consultation with the department of transportation, office of financial management, and institutions of higher education as defined in RCW 28B.10.016, shall submit a report to the appropriate committees of the legislature providing verifiable information regarding the percentage of state contracts awarded to small businesses and effects the technical assistance under RCW 43.19.725(3) is having on the number of small businesses annually receiving state contracts ((~~for goods and services purchased by the state~~)).

(2) By December 31, 2013, the department, the department of transportation, and institutions of higher education as defined in RCW 28B.10.016 must use the web-based information system created under subsection (3)(a) of this section to capture the data required under subsection (3)(a) of this section.

(3)(a) The department, in consultation with the department of transportation and the department of commerce, must develop and implement a web-based information system. The web-based information system must be used to capture data, track outcomes, and provide accurate and verifiable information regarding the effects the technical assistance under RCW 43.19.725(3) is having on the number of small businesses annually receiving state contracts for goods and services purchased by the state. Such measurable data shall include, but not be limited to: (i) The number of registered small businesses that have been awarded state procurement contracts, (ii) the percentage of total state dollars spent for goods and services purchased from registered small businesses, and (iii) the number of registered small businesses that have bid on but were not awarded state purchasing contracts.

(b) By September 1, 2012, the department, in collaboration with the department of transportation, shall submit a report to the appropriate committees of the legislature providing any recommendations for needed legislation to improve the collection of data required under (a) of this subsection.

(c) By December 31, 2013, the department must make the web-based information system available to all state purchasing agencies.

(d) The department may also make the web-based information system available to other agencies that would like to use the system for the purposes of chapter 358, Laws of 2011.

(4) By December 31, 2024, state agencies must use the enterprise procurement system created under subsection (5)(a) of this section to capture the data required under subsection (5)(a) of this section.

(5)(a) The department, in consultation with the office of financial management, must develop and implement an enterprise procurement system. The enterprise procurement system must be used to capture data, track outcomes, and provide accurate and verifiable information regarding the number of small businesses annually receiving state contracts. Such measurable data shall include, but is not limited to: (i) The number of registered small businesses that have been awarded state contracts, (ii) the percentage of total state dollars spent for contracts from registered small businesses, and (iii) the number of registered small businesses that have bid on but were not awarded state contracts.

(b) By September 1, 2022, the department, in collaboration with the office of financial management, shall submit a report to the appropriate committees of the legislature providing any recommendations for needed legislation to improve the collection of data required under (a) of this subsection.

(c) By July 1, 2024, the department must make the enterprise procurement system available to all state purchasing agencies.

(6) For the purposes of this section:

(a) "Agency" means any state agencies, departments, offices, divisions, boards, commissions, institutions of higher education as defined in RCW 28B.10.016, and correctional and other types of institutions.

(b) "Small business" has the same meaning as defined in RCW 39.26.010.

NEW SECTION. **Sec.**  A new section is added to chapter 39.24 RCW to read as follows:

(1) State agencies must award at least three percent of all public contracts that are exempt from competitive bidding requirements under RCW 39.26.125 and 39.04.280 to small businesses.

(2) State agencies shall:

(a) Perform outreach to small businesses in collaboration with the department of enterprise services to increase opportunities for small businesses to participate in state contracts; and

(b) Report public contract information in the state enterprise procurement system or another format required by the department of enterprise services to establish how many contracts are being awarded to small businesses.

(3) For the purposes of this section:

(a) "Agency" means any state agencies, departments, offices, divisions, boards, commissions, institutions of higher education as defined in RCW 28B.10.016, and correctional and other types of institutions.

(b) "Small business" has the same meaning as defined in RCW 39.26.010.

NEW SECTION. **Sec.**  A new section is added to chapter 28B.10 RCW to read as follows:

All public contracts entered into under this chapter on or after the effective date of this section are subject to the requirements established in section 4 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 39.04 RCW to read as follows:

All public contracts entered into under this chapter on or after the effective date of this section are subject to the requirements established in section 4 of this act.

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

All public contracts entered into under this chapter on or after the effective date of this section are subject to the requirements established in section 4 of this act.

**Sec.**  RCW 39.80.040 and 2016 sp.s. c 35 s 6010 are each amended to read as follows:

In the procurement of architectural and engineering services, the agency shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, based upon criteria established by the agency, the firm deemed to be the most highly qualified to provide the services required for the proposed project. Such agency procedures and guidelines shall include a plan to ensure that small businesses, including minority and women-owned firms and veteran-owned firms, are afforded the maximum practicable opportunity to compete for and obtain public contracts for services. The level of participation by small businesses, including minority and women-owned firms and veteran-owned firms, shall be consistent with their general availability within the professional communities involved. ((~~For the 2015-2017 biennium the procurement for services related to modular classrooms may be expedited.~~))

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