
HOUSE BILL 1259

State of Washington

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2021 Regular Session

By Representatives Santos, Dolan, Ryu, Valdez, Fey, Ramel, Ortiz-Self, Hackney, Ramos, Kloba, Callan, Lekanoff, Macri, Gregerson, Slatter, Stonier, and Harris-Talley

Read first time 01/18/21. Referred to Committee on Community & Economic Development.

1 AN ACT Relating to expanding public contracting opportunities for
2 women and minority business enterprises by increasing the regulatory
3 oversight and accountability of the office of minority and women's
4 business enterprises; amending RCW 39.19.020, 39.19.060, 39.19.080,
5 39.19.090, 39.19.200, 39.19.250, and 39.04.155; adding a new section
6 to chapter 39.19 RCW; and repealing RCW 39.19.100 and 39.19.110.

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

8 **Sec. 1.** RCW 39.19.020 and 2019 c 434 s 2 are each amended to
9 read as follows:

10 The definitions in this section apply throughout this chapter
11 unless the 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 (~~(5)~~) (6) "Educational institutions" means the state
10 universities, the regional universities, The Evergreen State College,
11 and the community colleges.

12 (~~(6)~~) (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 (~~(7)~~) (8) "Goods and/or services" includes professional
20 services and all other goods and services.

21 (~~(8)~~) (9) "Office" means the office of minority and women's
22 business enterprises.

23 (~~(9)~~) (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 (~~(10)~~) (11) "Procurement" means the purchase, lease, or rental
28 of any goods or services.

29 (~~(11)~~) (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 (~~(12)~~) (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 2019 c 434 s 3 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, 39.26, 43.19, and
5 47.28 RCW.

6 (2) Each state agency shall adopt a plan, developed in
7 consultation with the director and the advisory committee, to ensure
8 that minority and women-owned businesses are afforded the maximum
9 practicable opportunity to directly and meaningfully participate in
10 the execution of public contracts for public works and goods and
11 services. The plan shall include specific measures the agency will
12 undertake to increase the participation of certified minority and
13 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 ~~((f))~~ (1)(a) Except as provided in (b) of this subsection, if a
27 person, firm, corporation, or business does not comply with any
28 provision of this chapter or 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))~~ 10 percent of the amount of the contract
35 or up to ~~((five thousand dollars))~~ \$5,000 for each violation. ~~((The~~
36 office shall adopt, by rule, criteria for the imposition of penalties
37 under this section. 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 10 percent of the amount of the
5 contract or between \$1 and \$5,000 for each violation.

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

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

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

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

27 (b) For the purpose of any investigation or proceeding under this
28 chapter, the director or the director's designee may administer oaths
29 and affirmations, subpoena witnesses, compel their attendance, take
30 evidence, and require the production of any books, papers,
31 correspondence, memoranda, agreements, or other documents or records
32 that the director or the director's designee deems relevant or
33 material to the inquiry.

34 (c) Subpoenas issued under this section may be enforced under RCW
35 34.05.588.

36 (d) The audit and review unit must annually:

37 (i) Conduct a site review of a minimum of three percent of
38 persons, firms, corporations, or businesses awarded a contract under
39 this chapter;

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

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

7 (iv) Develop and implement a process for prioritizing and
8 conducting thorough investigations of persons, firms, corporations,
9 or businesses internally identified and determined to be the highest
10 priority for the agency.

11 (5) The procedures and sanctions in this section are not
12 exclusive; nothing in this section prevents the state agency or
13 educational institution administering the contracts from pursuing
14 such procedures or sanctions as are otherwise provided by statute,
15 rule, or contract provision.

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

18 (1) The director or director's designee may apply for and obtain
19 a superior court order approving and authorizing a subpoena in
20 advance of its issuance. The application may be made in the county
21 where the subpoenaed person resides or is found, or the county where
22 the subpoenaed documents, records, or evidence are located, or in
23 Thurston county. The application must:

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

25 (b) Adequately specify the documents, records, evidence, or
26 testimony; and

27 (c) Include a declaration made under oath that an investigation
28 is being conducted for a lawfully authorized purpose related to an
29 investigation within the office's authority and that the subpoenaed
30 documents, records, evidence, or testimony are reasonably related to
31 an investigation within the office's authority.

32 (2) When an application under this section is made to the
33 satisfaction of the court, the court must issue an order approving
34 the subpoena. An order under this subsection constitutes authority of
35 law for the agency to subpoena the documents, records, evidence, or
36 testimony.

37 (3) The director or director's designee may seek approval and a
38 court may issue an order under this section without prior notice to
39 any person, including the person to whom the subpoena is directed and

1 the person who is the subject of an investigation. An application for
2 court approval is subject to the fee and process set forth in RCW
3 36.18.012(3).

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

6 The minority and women's business enterprises account is created
7 in the custody of the state treasurer. All receipts from RCW
8 39.19.210, 39.19.220, and 39.19.230 and civil penalties imposed under
9 RCW 39.19.090 shall be deposited in the account. Expenditures from
10 the account may be used only for the purposes defraying all or part
11 of the costs of the office in administering this chapter. Only the
12 director or the director's designee may authorize expenditures from
13 the account. Moneys in the account may be spent only after
14 appropriation.

15 **Sec. 7.** RCW 39.19.250 and 2019 c 434 s 4 are each amended to
16 read as follows:

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

27 (2) The office must develop and maintain a list of contact people
28 at each state agency and educational institution who are able to
29 present to hearings of the appropriate committees of the legislature
30 its progress in carrying out the purposes of chapter 39.19 RCW.

31 (3) The office must submit a report aggregating the data received
32 from each state agency and educational institution, and the
33 information identified and actions taken under RCW 39.19.060(3) and
34 39.19.090(4), to the legislature and the governor.

35 **Sec. 8.** RCW 39.04.155 and 2019 c 434 s 5 are each amended to
36 read as follows:

1 (1) This section provides uniform small works roster provisions
2 to award contracts for construction, building, renovation,
3 remodeling, alteration, repair, or improvement of real property that
4 may be used by state agencies and by any local government that is
5 expressly authorized to use these provisions. These provisions may be
6 used in lieu of other procedures to award contracts for such work
7 with an estimated cost of (~~three hundred fifty thousand dollars~~)
8 \$500,000 or less. The small works roster process includes the limited
9 public works process authorized under subsection (3) of this section
10 and any local government authorized to award contracts using the
11 small works roster process under this section may award contracts
12 using the limited public works process under subsection (3) of this
13 section.

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

37 (b) A state agency establishing a small works roster or rosters
38 shall adopt rules implementing this subsection. A local government
39 establishing a small works roster or rosters shall adopt an ordinance
40 or resolution implementing this subsection. Procedures included in

1 rules adopted by the department of enterprise services in
2 implementing this subsection must be included in any rules providing
3 for a small works roster or rosters that is adopted by another state
4 agency, if the authority for that state agency to engage in these
5 activities has been delegated to it by the department of enterprise
6 services under chapter 43.19 RCW. An interlocal contract or agreement
7 between two or more state agencies or local governments establishing
8 a small works roster or rosters to be used by the parties to the
9 agreement or contract must clearly identify the lead entity that is
10 responsible for implementing the provisions of this subsection.

11 (c) Procedures shall be established for securing telephone,
12 written, or electronic quotations from contractors on the appropriate
13 small works roster to assure that a competitive price is established
14 and to award contracts to the lowest responsible bidder, as defined
15 in RCW 39.04.010. Invitations for quotations shall include an
16 estimate of the scope and nature of the work to be performed as well
17 as materials and equipment to be furnished. However, detailed plans
18 and specifications need not be included in the invitation. This
19 subsection does not eliminate other requirements for architectural or
20 engineering approvals as to quality and compliance with building
21 codes. Quotations may be invited from all appropriate contractors on
22 the appropriate small works roster. As an alternative, quotations may
23 be invited from at least five contractors on the appropriate small
24 works roster who have indicated the capability of performing the kind
25 of work being contracted, in a manner that will equitably distribute
26 the opportunity among the contractors on the appropriate roster.
27 However, if the estimated cost of the work is from (~~two hundred~~
28 ~~fifty thousand dollars~~) \$150,000 to (~~three hundred fifty thousand~~
29 ~~dollars~~) \$500,000, a state agency or local government that chooses
30 to solicit bids from less than all the appropriate contractors on the
31 appropriate small works roster must also notify the remaining
32 contractors on the appropriate small works roster that quotations on
33 the work are being sought. The government has the sole option of
34 determining whether this notice to the remaining contractors is made
35 by: (i) Publishing notice in a legal newspaper in general circulation
36 in the area where the work is to be done; (ii) mailing a notice to
37 these contractors; or (iii) sending a notice to these contractors by
38 facsimile or other electronic means. For purposes of this subsection
39 (2)(c), "equitably distribute" means that a state agency or local
40 government soliciting bids may not favor certain contractors on the

1 appropriate small works roster over other contractors on the
2 appropriate small works roster who perform similar services.

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

5 (e) Immediately after an award is made, the bid quotations
6 obtained shall be recorded, open to public inspection, and available
7 by at least one of the following: Telephone or electronic request.

8 (f) For projects awarded under the small works roster process
9 established under this subsection, a state agency or authorized local
10 government may waive the retainage requirements of RCW
11 60.28.011(1)(a), thereby assuming the liability for contractor's
12 nonpayment of: (i) Laborers, mechanics, subcontractors,
13 materialpersons, and suppliers; and (ii) taxes, increases, and
14 penalties under Titles 50, 51, and 82 RCW that may be due from the
15 contractor for the project. However, the state agency or local
16 government has the right of recovery against the contractor for any
17 payments made on the contractor's behalf. Recovery of unpaid wages
18 and benefits are the first priority for actions filed against the
19 contract.

20 (3)(a) In lieu of awarding contracts under subsection (2) of this
21 section, a state agency or authorized local government may award a
22 contract for work, construction, alteration, repair, or improvement
23 projects estimated to cost less than (~~fifty thousand dollars~~)
24 \$150,000 using the limited public works process provided under this
25 subsection. Public works projects awarded under this subsection are
26 exempt from the other requirements of the small works roster process
27 provided under subsection (2) of this section and are exempt from the
28 requirement that contracts be awarded after advertisement as provided
29 under RCW 39.04.010.

30 (b) For limited public works projects, a state agency or
31 authorized local government shall solicit electronic or written
32 quotations from a minimum of three contractors from the appropriate
33 small works roster and shall award the contract to the lowest
34 responsible bidder as defined under RCW 39.04.010. After an award is
35 made, the quotations shall be open to public inspection and available
36 by electronic request. A state agency or authorized local government
37 must equitably distribute opportunities for limited public works
38 projects among contractors willing to perform in the geographic area
39 of the work. A state agency or authorized local government shall
40 maintain a list of the contractors contacted and the contracts

1 awarded during the previous (~~twenty-four~~) 24 months under the
2 limited public works process, including the name of the contractor,
3 the contractor's registration number, the amount of the contract, a
4 brief description of the type of work performed, and the date the
5 contract was awarded. For limited public works projects, a state
6 agency or authorized local government may waive the payment and
7 performance bond requirements of chapter 39.08 RCW and may waive the
8 retainage requirements of RCW 60.28.011(1)(a), thereby assuming the
9 liability for the contractor's nonpayment of laborers, mechanics,
10 subcontractors, materialpersons, suppliers, and taxes, increases, and
11 penalties imposed under Titles 50, 51, and 82 RCW that may be due
12 from the contractor for the limited public works project, however the
13 state agency or authorized local government shall have the right of
14 recovery against the contractor for any payments made on the
15 contractor's behalf.

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

20 (5) A state agency or authorized local government may use the
21 limited public works process in this section to solicit and award
22 small works roster contracts to minibusinesses and microbusinesses as
23 defined under RCW 39.26.010 that are registered contractors.

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

26 (a) "Equitably distribute opportunities" means that a state
27 agency or authorized local government may not favor certain
28 contractors on the appropriate small works roster over other
29 contractors on the same roster who perform similar services.

30 (b) "State agency" means the department of enterprise services,
31 the state parks and recreation commission, the department of natural
32 resources, the department of fish and wildlife, the department of
33 transportation, any institution of higher education as defined under
34 RCW 28B.10.016, and any other state agency delegated authority by the
35 department of enterprise services to engage in construction,
36 building, renovation, remodeling, alteration, improvement, or repair
37 activities.

38 NEW SECTION. **Sec. 9.** The following acts or parts of acts are
39 each repealed:

1 (1) RCW 39.19.100 (Enforcement by attorney general—Injunctive
2 relief) and 1987 c 328 s 12; and
3 (2) RCW 39.19.110 (Enforcement by attorney general—Investigative
4 powers) and 1987 c 328 s 13.

--- **END** ---