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**SENATE BILL 5428**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators Valdez, J. Wilson, and Hunt; by request of Department of Enterprise Services

Read first time 01/17/23. Referred to Committee on State Government & Elections.

1 AN ACT Relating to modifying state procurement procedures for  
2 competitive, sole source, convenience, and emergency goods and  
3 services contracts; amending RCW 39.26.010, 39.26.070, 39.26.130,  
4 39.26.140, and 39.26.200; and repealing RCW 39.26.260, 39.26.270, and  
5 39.26.271.

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

7 **Sec. 1.** RCW 39.26.010 and 2022 c 71 s 12 are each amended to  
8 read as follows:

9 The definitions in this section apply throughout this chapter  
10 unless the context clearly requires otherwise.

11 (1) "Agency" means any state office or activity of the executive  
12 and judicial branches of state government, including state agencies,  
13 departments, offices, divisions, boards, commissions, institutions of  
14 higher education as defined in RCW 28B.10.016, and correctional and  
15 other types of institutions. "Agency" does not include a  
16 comprehensive cancer center participating in a collaborative  
17 arrangement as defined in RCW 28B.10.930 that is operated in  
18 conformance with RCW 28B.10.930.

19 (2) "Bid" means an offer, proposal, or quote for goods or  
20 services in response to a solicitation issued for such goods or

1 services by the department or an agency of Washington state  
2 government.

3 (3) "Bidder" means an individual or entity who submits a bid,  
4 quotation, or proposal in response to a solicitation issued for such  
5 goods or services by the department or an agency of Washington state  
6 government.

7 (4) "Client services" means services provided directly to agency  
8 clients including, but not limited to, medical and dental services,  
9 employment and training programs, residential care, and subsidized  
10 housing.

11 (5) "Community rehabilitation program of the department of social  
12 and health services" means any entity that:

13 (a) Is registered as a nonprofit corporation with the secretary  
14 of state; and

15 (b) Is recognized by the department of social and health  
16 services, division of vocational rehabilitation as eligible to do  
17 business as a community rehabilitation program.

18 (6) "Competitive solicitation" means a documented formal process  
19 providing an equal and open opportunity to bidders and culminating in  
20 a selection based on predetermined criteria.

21 (7) "Contractor" means an individual or entity awarded a contract  
22 with an agency to perform a service or provide goods.

23 (8) "Debar" means to prohibit a contractor, individual, or other  
24 entity from submitting a bid, having a bid considered, or entering  
25 into a state contract during a specified period of time as set forth  
26 in a debarment order.

27 (9) "Department" means the department of enterprise services.

28 (10) "Director" means the director of the department of  
29 enterprise services.

30 (11) "Estimated useful life" of an item means the estimated time  
31 from the date of acquisition to the date of replacement or disposal,  
32 determined in any reasonable manner.

33 (12) "Goods" means products, materials, supplies, or equipment  
34 provided by a contractor.

35 (13) "In-state business" means a business that has its principal  
36 office located in Washington.

37 (14) "Life-cycle cost" means the total cost of an item to the  
38 state over its estimated useful life, including costs of selection,  
39 acquisition, operation, maintenance, and where applicable, disposal,

1 as far as these costs can reasonably be determined, minus the salvage  
2 value at the end of its estimated useful life.

3 (15) "Master contracts" means a contract for specific goods or  
4 services, or both, that is solicited and established by the  
5 department in accordance with procurement laws and rules on behalf of  
6 and for general use by agencies as specified by the department.

7 (16) "Microbusiness" means any business entity, including a sole  
8 proprietorship, corporation, partnership, or other legal entity,  
9 that: (a) Is owned and operated independently from all other  
10 businesses; and (b) has a gross revenue of less than (~~one million~~  
11 ~~dollars~~) \$1,000,000 annually as reported on its federal tax return  
12 or on its return filed with the department of revenue.

13 (17) "Minibusiness" means any business entity, including a sole  
14 proprietorship, corporation, partnership, or other legal entity,  
15 that: (a) Is owned and operated independently from all other  
16 businesses; and (b) has a gross revenue of less than (~~three million~~  
17 ~~dollars~~) \$3,000,000, but (~~one million dollars~~) \$1,000,000 or more  
18 annually as reported on its federal tax return or on its return filed  
19 with the department of revenue.

20 (18) "Polychlorinated biphenyls" means any polychlorinated  
21 biphenyl congeners and homologs.

22 (19) "Practical quantification limit" means the lowest  
23 concentration that can be reliably measured within specified limits  
24 of precision, accuracy, representativeness, completeness, and  
25 comparability during routine laboratory operating conditions.

26 (20) "Purchase" means the acquisition of goods or services,  
27 including the leasing or renting of goods.

28 (21) "Services" means labor, work, analysis, or similar  
29 activities provided by a contractor to accomplish a specific scope of  
30 work.

31 (22) "Small business" means an in-state business, including a  
32 sole proprietorship, corporation, partnership, or other legal entity,  
33 that:

34 (a) Certifies, under penalty of perjury, that it is owned and  
35 operated independently from all other businesses and has either:

36 (i) Fifty or fewer employees; or

37 (ii) A gross revenue of less than (~~seven million dollars~~)  
38 \$7,000,000 annually as reported on its federal income tax return or  
39 its return filed with the department of revenue over the previous  
40 three consecutive years; or

1 (b) Is certified with the office of women and minority business  
2 enterprises under chapter 39.19 RCW.

3 (23) "Sole source" means a contractor providing goods or services  
4 of such a unique nature or sole availability (~~at the location~~  
5 ~~required~~) that the contractor is clearly and justifiably the only  
6 practicable source to provide the goods or services.

7 (24) "Washington grown" has the definition in RCW 15.64.060.

8 **Sec. 2.** RCW 39.26.070 and 2015 c 79 s 6 are each amended to read  
9 as follows:

10 A convenience contract is a contract for specific goods or  
11 services, or both, that is solicited and established in accordance  
12 with procurement laws and rules for use by (~~a specific agency or~~) a  
13 specified group of agencies (~~as needed from time to time~~). A  
14 convenience contract is not available for general use and (~~may~~  
15 ~~only~~) must be (~~used as specified~~) approved by the department.  
16 Convenience contracts are not intended to replace or supersede master  
17 contracts as defined in this chapter.

18 **Sec. 3.** RCW 39.26.130 and 2012 c 224 s 15 are each amended to  
19 read as follows:

20 (1) An agency may make emergency purchases as defined in  
21 subsection (~~(+3)~~) (4) of this section. When an emergency purchase is  
22 made, the agency head shall submit written notification of the  
23 purchase within (~~three~~) 10 business days of the purchase to the  
24 director. This notification must contain a description of the  
25 purchase, a description of the emergency and the circumstances  
26 leading up to the emergency, and an explanation of why the  
27 circumstances required an emergency purchase.

28 (2) Emergency contracts must be submitted to the department and  
29 made available for public inspection within (~~three working~~) 10  
30 business days following the commencement of work or execution of the  
31 contract, whichever occurs first.

32 (3) The department may authorize exceptions to this section due  
33 to exigent circumstances.

34 (4) As used in this section, "emergency" means a set of  
35 unforeseen circumstances beyond the control of the agency that  
36 either:

37 (a) Present a real, immediate, and extreme threat to the proper  
38 performance of essential functions; or

1 (b) May reasonably be expected to result in material loss or  
2 damage to property, bodily injury, or loss of life, if immediate  
3 action is not taken.

4 **Sec. 4.** RCW 39.26.140 and 2012 c 224 s 16 are each amended to  
5 read as follows:

6 (1) Agencies must submit sole source contracts to the department  
7 and make the contracts available for public inspection not (~~less~~)  
8 fewer than (~~ten~~) 15 working days before the proposed starting date  
9 of the contract. Agencies must provide documented justification for  
10 sole source contracts to the department when the contract is  
11 submitted, and must include evidence that the agency posted the  
12 contract opportunity at a minimum on the state's enterprise vendor  
13 registration and bid notification system.

14 (2) The department must approve sole source contracts before any  
15 such contract becomes binding and before any services may be  
16 performed or goods provided under the contract. These requirements  
17 shall also apply to all sole source contracts except as otherwise  
18 exempted by the director.

19 (3) The director may provide an agency an exemption from the  
20 requirements of this section for a contract or contracts. Requests  
21 for exemptions must be submitted to the director in writing.

22 (4) Contracts awarded by institutions of higher education from  
23 nonstate funds are exempt from the requirements of this section.

24 **Sec. 5.** RCW 39.26.200 and 2020 c 269 s 3 are each amended to  
25 read as follows:

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

30 (b) After reasonable notice to the contractor and reasonable  
31 opportunity for that contractor to be heard, the director has the  
32 authority to debar a contractor for cause from consideration for  
33 award of contracts. The debarment must be for a period of not more  
34 than three years.

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

37 (a) Conviction for commission of a criminal offense as an  
38 incident to obtaining or attempting to obtain a public or private

1 contract or subcontract, or in the performance of such contract or  
2 subcontract;

3 (b) Conviction or a final determination in a civil action under  
4 state or federal statutes of fraud, embezzlement, theft, forgery,  
5 bribery, falsification or destruction of records, receiving stolen  
6 property, violation of the federal false claims act, 31 U.S.C. Sec.  
7 3729 et seq., or the state medicaid fraud false claims act, chapter  
8 74.66 RCW, or any other offense indicating a lack of business  
9 integrity or business honesty that currently, seriously, and directly  
10 affects responsibility as a state contractor;

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

13 (d) Two or more violations within the previous five years of the  
14 national labor relations act as determined by the national labor  
15 relations board or court of competent jurisdiction;

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

19 (i) Deliberate failure without good cause to perform in  
20 accordance with the specifications or within the time limit provided  
21 in the contract; or

22 (ii) A recent record of failure to perform or of unsatisfactory  
23 performance in accordance with the terms of one or more contracts,  
24 however the failure to perform or unsatisfactory performance caused  
25 by acts beyond the control of the contractor may not be considered to  
26 be a basis for debarment;

27 (f) Violation of ethical standards set forth in RCW 39.26.020;  
28 and

29 (g) Any other cause the director determines to be so serious and  
30 compelling as to affect responsibility as a state contractor,  
31 including debarment by another governmental entity for any cause  
32 listed in regulations (~~and~~

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

37 (3) The director must issue a written decision to debar. The  
38 decision must:

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

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

3 NEW SECTION. **Sec. 6.** The following acts or parts of acts are  
4 each repealed:

5 (1) RCW 39.26.260 (Preferences—In-state procurement) and 1983 c  
6 183 s 1;

7 (2) RCW 39.26.270 (List of statutes and regulations of each state  
8 that grants preference to in-state vendors) and 2011 1st sp.s. c 43 s  
9 240 & 1983 c 183 s 2; and

10 (3) RCW 39.26.271 (Rules for reciprocity in bidding) and 2015 c  
11 79 s 9, 2011 1st sp.s. c 43 s 241, & 1983 c 183 s 3.

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