
SENATE BILL 6198

State of Washington

62nd Legislature

2012 Regular Session

By Senators Pridemore, Swecker, and Conway; by request of Department of Enterprise Services

Read first time 01/13/12. Referred to Committee on Government Operations, Tribal Relations & Elections.

1 AN ACT Relating to centralizing the authority and responsibility
2 for the development, process, and oversight of state procurement of
3 goods and services; amending RCW 43.19.005, 43.19.725, and 43.19.727;
4 adding a new chapter to Title 39 RCW; recodifying RCW 43.19.1932,
5 43.19.530, 43.19.534, 43.19.535, 43.19.536, 43.19.538, 43.19.539,
6 43.19.700, 43.19.702, 43.19.704, 43.19.797, and 39.29.052; repealing
7 RCW 43.19.180, 43.19.185, 43.19.190, 43.19.1901, 43.19.1905,
8 43.19.19052, 43.19.1906, 43.19.1908, 43.19.1911, 43.19.1913,
9 43.19.1914, 43.19.1915, 43.19.1937, 43.19.1939, and 43.19.200; and
10 providing an effective date.

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

12 NEW SECTION. **Sec. 1.** INTENT. It is the intent of this chapter to
13 promote open competition and transparency for all contracts for goods
14 and services entered into by state agencies, unless specifically
15 exempted under this chapter. It is further the intent of this chapter
16 to centralize within one agency the authority and responsibility for
17 the development and oversight of policies related to state procurement
18 and contracting. To ensure the highest ethical standards, proper

1 accounting for contract expenditures, and for ease of public review, it
2 is further the intent to centralize the location of information about
3 state procurements and contracts.

4 In addition, the legislature intends that the state develop
5 procurement policies, procedures, and materials that encourage and
6 facilitate state agency purchase of goods and services from Washington
7 small businesses.

8 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
9 section apply throughout this chapter unless the context clearly
10 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.

16 (2) "Bid" means an offer, proposal, or quote for goods or services
17 in response to a solicitation issued for such goods or services by the
18 department or an agency of Washington state government.

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

23 (4) "Businesses owned and operated by persons with disabilities"
24 means any for-profit business certified under chapter 39.19 RCW as
25 being owned and controlled by persons who have been either:

26 (a) Determined by the department of social and health services to
27 have a developmental disability, as defined in RCW 71A.10.020;

28 (b) Determined by an agency established under Title I of the
29 federal vocational rehabilitation act to be or have been eligible for
30 vocational rehabilitation services;

31 (c) Determined by the federal social security administration to be
32 or have been eligible for either social security disability insurance
33 or supplemental security income; or

34 (d) Determined by the United States department of veterans affairs
35 to be or have been eligible for vocational rehabilitation services due
36 to service-connected disabilities, under 38 U.S.C. Sec. 3100 et seq.

1 (5) "Client services" means services provided directly to agency
2 clients including, but not limited to, medical and dental services,
3 employment and training programs, residential care, and subsidized
4 housing.

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

7 (a) Is registered as a nonprofit corporation with the secretary of
8 state; and

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

12 (7) "Competitive solicitation" means a documented formal process
13 providing an equal and open opportunity to bidders and culminating in
14 a selection based on predetermined criteria.

15 (8) "Contractor" means an individual or entity awarded a contract
16 with an agency to perform a service or provide goods.

17 (9) "Convenience contract" means a contract for specific goods or
18 services, or both, that is solicited and established by the department
19 in accordance with procurement laws and rules on behalf of and for use
20 by a specific agency or group of agencies as needed from time to time.
21 A convenience contract is not available for general use and may only be
22 used as specified by the department.

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

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

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

30 (13) "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 (14) "Goods" means products, materials, supplies, or equipment
34 provided by a contractor.

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

37 (16) "Life-cycle cost" means the total cost of an item to the state
38 over its estimated useful life, including costs of selection,

1 acquisition, operation, maintenance, and where applicable, disposal, as
2 far as these costs can reasonably be determined, minus the salvage
3 value at the end of its estimated useful life.

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

8 (18) "Purchase" means the acquisition of goods or services,
9 including the leasing or renting of goods.

10 (19) "Services" means labor, work, analysis, or similar activities
11 provided by a contractor to accomplish a specific scope of work.

12 (20) "Small business" means an in-state business, including a sole
13 proprietorship, corporation, partnership, or other legal entity, that:

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

16 (i) Fifty or fewer employees; or

17 (ii) A gross revenue of less than seven million dollars annually as
18 reported on its federal income tax return or its return filed with the
19 department of revenue over the previous three consecutive years; or

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

22 (21) "Sole source" means a contractor providing goods or services
23 of such a unique nature or sole availability at the location required
24 that the contractor is clearly and justifiably the only practicable
25 source to provide the goods or services.

26 (22) "Washington grown" has the definition in RCW 15.64.060.

27 NEW SECTION. **Sec. 3.** ETHICS IN PUBLIC CONTRACTING. (1)(a) A
28 state officer or employee of an agency who seeks to acquire goods or
29 services or who participates in those contractual matters is subject to
30 the requirements in RCW 42.52.150.

31 (b) A contractor who contracts with an agency to perform services
32 related to the acquisition of goods and services for or on behalf of
33 the state is subject to the requirements in RCW 42.52.150.

34 (2) No person or entity who seeks or may seek a contract with a
35 state agency may give, loan, transfer, or deliver to any person
36 something of economic value for which receipt of such item would cause

1 a state officer or employee to be in a violation of RCW 42.52.040,
2 42.52.110, 42.52.120, 42.52.140, or 42.52.150.

3 NEW SECTION. **Sec. 4.** RELEASE OF BID DOCUMENTS. (1) Records
4 related to state procurements are public records subject to disclosure
5 to the extent provided in chapter 42.56 RCW except as provided in
6 subsection (2) of this section.

7 (2) Bid submissions and bid evaluations are exempt from disclosure
8 until the agency signs the contract or contracts resulting from the
9 procurement. However, in the event a losing bidder requires the
10 records in order to file a bid protest, then bid submissions and bid
11 evaluations are subject to disclosure except as otherwise exempt after
12 the agency announces the apparent successful bidder.

13 NEW SECTION. **Sec. 5.** PROHIBITION ON CERTAIN CONTRACTS. Agencies
14 that are authorized or directed to establish a board, commission,
15 council, committee, or other similar group made up of volunteers to
16 advise the activities and management of the agency are prohibited from
17 entering into contracts with any or all volunteer members as a means to
18 reimburse or otherwise pay members of such board, commission, council,
19 committee, or other similar group for the work performed as part of the
20 entity, except where payment is specifically authorized by statute.

21 NEW SECTION. **Sec. 6.** PROVISION OF GOODS AND SERVICES. (1) In
22 addition to the powers and duties provided in chapter 43.19 RCW, the
23 department shall make available goods and services to support state
24 agencies, and may enter into agreements with any other local or federal
25 governmental agency or entity or a public benefit nonprofit
26 organization, in compliance with RCW 39.34.055, and any tribes located
27 in the state, to furnish such products and services as deemed
28 appropriate by both parties.

29 (2) The department shall ensure full cost recovery from state
30 agencies, other local or federal governmental agency or entity, public
31 benefit nonprofit organizations, or any tribes located in the state,
32 for activities performed pursuant to subsection (1) of this section.
33 Cost recovery must ensure that the department is reimbursed its full
34 cost for providing the goods and services furnished as determined by

1 the department. Cost recovery may be collected through the state
2 agency, other governmental entity, nonprofit organization, or through
3 the contractor.

4 (3) All governmental entities of this state may enter into
5 agreements under this section with the department, unless otherwise
6 prohibited.

7 NEW SECTION. **Sec. 7.** COOPERATIVE PURCHASING AUTHORIZED. (1) On
8 behalf of the state, the department may participate in, sponsor,
9 conduct, or administer a cooperative purchasing agreement for the
10 procurement of any goods or services with one or more states, state
11 agencies, local governments, local government agencies, federal
12 agencies, or tribes located in the state, in accordance with an
13 agreement entered into between the participants. The cooperative
14 purchasing may include, but is not limited to, joint or multiparty
15 contracts between the entities, and master contracts or convenience
16 contracts that are made available to other public agencies.

17 (2) All cooperative purchasing conducted under this chapter must be
18 through contracts awarded through a competitive solicitation process.

19 NEW SECTION. **Sec. 8.** PROCUREMENT AGENCY. (1) The director is
20 responsible for the development and oversight of policy for the
21 procurement of goods and services by all state agencies under this
22 chapter.

23 (2) The director is authorized to adopt rules, policies, and
24 guidelines governing the procurement, contracting, and contract
25 management of any and all goods and services procured by state agencies
26 under this chapter.

27 (3) The director or designee is the sole authority to enter into
28 master contracts on behalf of the state.

29 NEW SECTION. **Sec. 9.** DIRECTOR'S DUTIES AND RESPONSIBILITIES
30 REGARDING PROCUREMENT. The director shall:

31 (1) Establish overall state policies, standards, and procedures
32 regarding the procurement of goods and services by all state agencies;

33 (2) Develop policies and standards for the use of credit cards or
34 similar methods to make purchases;

1 (3) Establish procurement processes for information technology
2 goods and services, using technology standards and policies established
3 by the office of the chief information officer under chapter 43.41A
4 RCW;

5 (4) Enter into contracts or delegate the authority to enter into
6 contracts on behalf of the state to facilitate the purchase, lease,
7 rent, or otherwise acquire all goods and services and equipment needed
8 for the support, maintenance, and use of all state agencies, except as
9 provided in section 10 of this act;

10 (5) Have authority to delegate to agencies authorization to
11 purchase goods and services. The authorization must specify
12 restrictions as to dollar amount or to specific types of goods and
13 services, based on a risk assessment process developed by the
14 department. Acceptance of the purchasing authorization by an agency
15 does not relieve the agency from conformance with this chapter or from
16 policies established by the director. Also, the director may not
17 delegate to a state agency the authorization to purchase goods and
18 services if the agency is not in substantial compliance with overall
19 procurement policies as established by the director;

20 (6) Develop procurement policies and procedures, such as unbundled
21 contracting and subcontracting, that encourage and facilitate the
22 purchase of goods and services from Washington small businesses to the
23 maximum extent practicable and consistent with international trade
24 agreement commitments;

25 (7) Develop and implement an enterprise system for electronic
26 procurement;

27 (8) Provide for a commodity classification system and provide for
28 the adoption of goods and services commodity standards;

29 (9) Establish overall state policy for compliance by all agencies
30 regarding:

31 (a) Food procurement procedures and materials that encourage and
32 facilitate the purchase of Washington grown food by state agencies and
33 institutions to the maximum extent practicable and consistent with
34 international trade agreement commitments; and

35 (b) Policies requiring all food contracts to include a plan to
36 maximize to the extent practicable and consistent with international
37 trade agreement commitments the availability of Washington grown food
38 purchased through the contract;

1 (10) Develop guidelines and criteria for the purchase of vehicles,
2 high gas mileage vehicles, and alternate vehicle fuels and systems,
3 equipment, and materials, that reduce overall energy-related costs and
4 energy use by the state, including investigations into all
5 opportunities to aggregate the purchasing of clean technologies by
6 state and local governments, and including the requirement that new
7 passenger vehicles purchased by the state meet the minimum standards
8 for passenger automobile fuel economy established by the United States
9 secretary of transportation pursuant to the energy policy and
10 conservation act (15 U.S.C. Sec. 2002); and

11 (11) Develop and enact rules to implement the provisions of this
12 chapter.

13 NEW SECTION. **Sec. 10.** EXEMPTIONS FROM CHAPTER. (1) The
14 provisions of this chapter do not apply in any manner to the operation
15 of the state legislature except as requested by the legislature.

16 (2) The provisions of this chapter do not apply to the contracting
17 for services and activities that are necessary to establish, operate,
18 or manage the state data center, including architecture, design,
19 engineering, installation, and operation of the facility, that are
20 approved by the technology services board or the acquisition of
21 proprietary software and information technology services necessary for
22 or part of the provision of services offered by the consolidated
23 technology services agency.

24 (3) Primary authority for the purchase of specialized equipment,
25 and instructional and research material, for their own use rests with
26 the institutions of higher education as defined in RCW 28B.10.016.

27 (4) Universities operating hospitals with approval from the
28 director, as the agent for state hospitals as defined in RCW 72.23.010,
29 and for health care programs provided in state correctional
30 institutions as defined in RCW 72.65.010(3) and veterans' institutions
31 as defined in RCW 72.36.010 and 72.36.070, may make purchases for
32 hospital operation by participating in contracts for materials,
33 supplies, and equipment entered into by nonprofit cooperative hospital
34 group purchasing organizations if documented to be more cost-effective.

35 (5) Primary authority for the purchase of materials, supplies, and
36 equipment, for resale to other than public agencies, rests with the
37 state agency concerned.

1 (6) The authority for the purchase of insurance and bonds rests
2 with the risk manager under RCW 43.19.769, except for institutions of
3 higher education that choose to exercise independent purchasing
4 authority under RCW 28B.10.029.

5 (7) The authority to purchase interpreter services and interpreter
6 brokerage services on behalf of limited-English speaking or sensory-
7 impaired applicants and recipients of public assistance rests with the
8 department of social and health services and the health care authority.

9 NEW SECTION. **Sec. 11.** TRAINING. (1) The department must provide
10 expertise and training on best practices for state procurement.

11 (2) The department must establish either training or certification
12 programs, or both, to ensure consistency in procurement practices for
13 employees authorized to perform procurement functions under the
14 provisions of this chapter.

15 (3) Beginning July 1, 2013, state agencies must require agency
16 employees responsible for developing, executing, or managing
17 procurements or contracts, or both, to complete department-approved
18 training or certification programs, or both. Beginning July 1, 2015,
19 no agency employee may execute or manage contracts unless the employee
20 has met the training or certification requirements or both as set by
21 the department. Any request for exception to this requirement must be
22 submitted to the director for approval before the employee executes or
23 manages contracts.

24 NEW SECTION. **Sec. 12.** COMPETITIVE SOLICITATION. (1) Insofar as
25 practicable, all purchases of or contracts for goods and services must
26 be based on a competitive solicitation process. This process may
27 include electronic or web-based solicitations, bids, and signatures.
28 This requirement also applies to procurement of goods and services
29 executed by agencies under delegated authority granted in accordance
30 with section 9 of this act or under RCW 28B.10.029.

31 (2) Subsection (1) of this section applies to contract amendments
32 that substantially change the scope of work of the original contract or
33 substantially increase the value of the original contract.

34 NEW SECTION. **Sec. 13.** COMPETITIVE SOLICITATION--EXCEPTIONS. All

1 contracts must be entered into pursuant to competitive solicitation,
2 except for:

3 (1) Emergency contracts;

4 (2) Sole source contracts that comply with the provisions of
5 section 15 of this act;

6 (3) Direct buy purchases, as designated by the director. The
7 director shall establish policies to define criteria for direct buy
8 purchases. These criteria may be adjusted to accommodate special
9 market conditions and to promote market diversity for the benefit of
10 the citizens of the state of Washington;

11 (4) Purchases involving special facilities, services, or market
12 conditions, in which instances of direct negotiation is in the best
13 interest of the state;

14 (5) Purchases from master contracts established by the department
15 or an agency authorized by the department;

16 (6) Client services contracts;

17 (7) Other specific contracts or classes or groups of contracts
18 exempted from the competitive solicitation process when the director
19 determines that a competitive solicitation process is not appropriate
20 or cost-effective;

21 (8) Off-contract purchases of Washington grown food when such food
22 is not available from Washington sources through an existing contract.
23 However, Washington grown food purchased under this subsection must be
24 of an equivalent or better quality than similar food available through
25 the contract and must be able to be paid from the agency's existing
26 budget. This requirement also applies to purchases and contracts for
27 purchases executed by state agencies, including institutions of higher
28 education as defined in RCW 28B.10.016, under delegated authority
29 granted in accordance with this chapter or under RCW 28B.10.029;

30 (9) Contracts awarded to companies that furnish a service where the
31 tariff is established by the utilities and transportation commission or
32 other public entity;

33 (10) Intergovernmental agreements awarded to any governmental
34 entity, whether federal, state, or local and any department, division,
35 or subdivision thereof;

36 (11) Contracts for services that are necessary to the conduct of
37 collaborative research if the use of a specific contractor is mandated
38 by the funding source as a condition of granting funds;

1 (12) Contracts for architectural and engineering services as
2 defined in RCW 39.80.020, which shall be entered into under chapter
3 39.80 RCW;

4 (13) Contracts for the employment of expert witnesses for the
5 purposes of litigation; and

6 (14) Contracts for bank supervision authorized under RCW 30.38.040.

7 NEW SECTION. **Sec. 14.** EMERGENCY PURCHASES. (1) An agency may
8 make emergency purchases as defined in subsection (3) of this section.
9 When an emergency purchase is made, the agency head shall submit
10 written notification of the purchase within three business days of the
11 purchase to the director. This notification must contain a description
12 of the purchase, a description of the emergency and the circumstances
13 leading up to the emergency, and an explanation of why the
14 circumstances required an emergency purchase.

15 (2) Emergency contracts must be submitted to the department and
16 made available for public inspection within three working days
17 following the commencement of work or execution of the contract,
18 whichever occurs first.

19 (3) As used in this section, "emergency" means a set of unforeseen
20 circumstances beyond the control of the agency that either:

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

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

26 NEW SECTION. **Sec. 15.** SOLE SOURCE CONTRACTS. (1) Agencies must
27 submit sole source contracts to the department and make the contracts
28 available for public inspection not less than ten working days before
29 the proposed starting date of the contract. Agencies must provide
30 documented justification for sole source contracts to the department
31 when the contract is submitted, and must include evidence that the
32 agency posted the contract opportunity at a minimum on the state's
33 enterprise vendor registration and bid notification system.

34 (2) The department must approve sole source contracts before any
35 such contract becomes binding and before any services may be performed

1 or goods provided under the contract. These requirements shall also
2 apply to all sole source contracts except as otherwise exempted by the
3 director.

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

7 NEW SECTION. **Sec. 16.** NOTIFICATIONS. (1) Agencies must provide
8 public notice for all competitive solicitations. Agencies must post
9 all contract opportunities on the state's enterprise vendor
10 registration and bid notification system. In addition, agencies may
11 notify contractors and potential bidders by sending notices by mail,
12 electronic transmission, newspaper advertisements, or other means as
13 may be appropriate.

14 (2) Agencies should try to anticipate changes in a requirement
15 before the bid submittal date and to provide reasonable notice to all
16 prospective bidders of any resulting modification or cancellation. If,
17 in the opinion of the agency, it is not possible to provide reasonable
18 notice, the submittal date for receipt of bids may be postponed and all
19 bidders notified.

20 NEW SECTION. **Sec. 17.** AWARD. (1)(a) After bids that are
21 submitted in response to a competitive solicitation process are
22 reviewed by the awarding agency, the awarding agency may either:

23 (i) Reject all bids and rebid or cancel the competitive
24 solicitation; or

25 (ii) Award the purchase or contract to the lowest responsive and
26 responsible bidder.

27 (b) The agency may award one or more contracts from a competitive
28 solicitation.

29 (2) In determining whether the bidder is a responsible bidder, the
30 agency must consider the following elements:

31 (a) The ability, capacity, and skill of the bidder to perform the
32 contract or provide the service required;

33 (b) The character, integrity, reputation, judgment, experience, and
34 efficiency of the bidder;

35 (c) Whether the bidder can perform the contract within the time
36 specified;

1 (d) The quality of performance of previous contracts or services;
2 (e) The previous and existing compliance by the bidder with laws
3 relating to the contract or services; and
4 (f) Such other information as may be secured having a bearing on
5 the decision to award the contract.

6 (3) In determining the lowest responsive and responsible bidder, an
7 agency may consider best value criteria, including but not limited to:

8 (a) Whether the bid satisfies the needs of the state as specified
9 in the solicitation documents;

10 (b) Whether the bid encourages diverse contractor participation;

11 (c) Whether the bid provides competitive pricing, economies, and
12 efficiencies;

13 (d) Whether the bid considers human health and environmental
14 impacts;

15 (e) Whether the bid appropriately weighs cost and noncost
16 considerations; and

17 (f) Life-cycle cost.

18 (4) The solicitation document must clearly set forth the
19 requirements and criteria that the agency will apply in evaluating bid
20 submissions.

21 (5) The awarding agency may at its discretion reject the bid of any
22 contractor who has failed to perform satisfactorily on a previous
23 contract with the state.

24 (6) After reviewing all bid submissions, an agency may enter into
25 negotiations with the lowest responsive and responsible bidder in order
26 to determine if the bid may be improved. An agency may not use this
27 negotiation opportunity to permit a bidder to change a nonresponsive
28 bid into a responsive bid.

29 (7) The procuring agency must enter into the state's enterprise
30 vendor and bid notification system the name of each bidder and an
31 indication as to the successful bidder.

32 NEW SECTION. **Sec. 18.** COMPLAINT AND PROTEST PROCESS. (1) All
33 agencies that have original or delegated procurement authority for
34 goods or services must have a clear and transparent complaint process.
35 The complaint process must provide for the complaint to be submitted
36 and response provided before the deadline for bid submissions.

1 (2) All agencies that have original or delegated procurement
2 authority for goods or services must have a clear and transparent
3 protest process. The protest process must include a protest period
4 after the apparent successful bidder is announced but before the
5 contract is signed.

6 (3) The director may grant authority for an agency to sign a
7 contract before the protest process is completed due to exigent
8 circumstances.

9 NEW SECTION. **Sec. 19.** PROCUREMENT MANAGEMENT. (1) The department
10 must adopt uniform policies and procedures for the effective and
11 efficient management of contracts by all state agencies. The policies
12 and procedures must, at a minimum, include:

13 (a) Precontract procedures for selecting potential contractors
14 based on their qualifications and ability to perform;

15 (b) Model complaint and protest procedures;

16 (c) Alternative dispute resolution processes;

17 (d) Incorporation of performance measures and measurable benchmarks
18 in contracts;

19 (e) Model contract terms to ensure contract performance and
20 compliance with state and federal standards;

21 (f) Executing contracts using electronic signatures;

22 (g) Criteria for contract amendments;

23 (h) Postcontract procedures;

24 (i) Procedures and criteria for terminating contracts for cause or
25 otherwise; and

26 (j) Any other subject related to effective and efficient contract
27 management.

28 (2) An agency may not enter into a contract under which the
29 contractor could charge additional costs to the agency, the department,
30 the joint legislative audit and review committee, or the state auditor
31 for access to data generated under the contract. A contractor under
32 such a contract must provide access to data generated under the
33 contract to the contracting agency, the joint legislative audit and
34 review committee, and the state auditor.

35 (3) To the extent practicable, agencies should enter into
36 performance-based contracts. Performance-based contracts identify
37 expected deliverables and performance measures or outcomes.

1 Performance-based contracts also use appropriate techniques, which may
2 include but are not limited to, either consequences or incentives or
3 both to ensure that agreed upon value to the state is received.
4 Payment for goods and services under performance-based contracts should
5 be contingent on the customer achieving performance outcomes.

6 (4) An agency and contractor may execute a contract using
7 electronic signatures.

8 (5) As used in subsection (2) of this section, "data" includes all
9 information that supports the findings, conclusions, and
10 recommendations of the contractor's reports, including computer models
11 and the methodology for those models.

12 NEW SECTION. **Sec. 20.** BONDS--ANNUAL BID BOND, PERFORMANCE, AND
13 PROTEST. When any bid has been accepted, the agency may require of the
14 successful bidder a bond payable to the state in such amount with such
15 surety or sureties as determined by the agency, conditioned that the
16 successful bidder will fully, faithfully, and accurately execute the
17 terms of the contract into which the successful bidder has entered.
18 The bond must be filed in the agency. Bidders who regularly do
19 business with the state shall be permitted to file with the agency an
20 annual bid bond in an amount established by the agency, and such annual
21 bid bond shall be acceptable as surety in lieu of furnishing surety
22 with individual bids. The agency may also require performance bonds,
23 protest bonds, or other bonds it deems necessary. Agencies must adhere
24 to the policies developed by the department regarding the use of
25 protest bonds.

26 NEW SECTION. **Sec. 21.** AUTHORITY TO DEBAR. (1)(a) The director
27 shall provide notice to the contractor of the director's intent to
28 debar with the specific reason for the debarment. The department must
29 establish the debarment process 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 award
33 of contracts. The debarment must be for a period of not more than
34 three years.

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

1 (a) Conviction for commission of a criminal offense as an incident
2 to obtaining or attempting to obtain a public or private contract or
3 subcontract, or in the performance of such contract or subcontract;

4 (b) Conviction under state or federal statutes of embezzlement,
5 theft, forgery, bribery, falsification or destruction of records,
6 receiving stolen property, or any other offense indicating a lack of
7 business integrity or business honesty that currently, seriously, and
8 directly affects responsibility as a state contractor;

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

11 (d) Violation of contract provisions, as set forth in this
12 subsection, of a character that is regarded by the director to be so
13 serious as to justify debarment action:

14 (i) Deliberate failure without good cause to perform in accordance
15 with the specifications or within the time limit provided in the
16 contract; or

17 (ii) A recent record of failure to perform or of unsatisfactory
18 performance in accordance with the terms of one or more contracts,
19 however the failure to perform or unsatisfactory performance caused by
20 acts beyond the control of the contractor may not be considered to be
21 a basis for debarment;

22 (e) Violation of ethical standards set forth in section 3 of this
23 act; and

24 (f) Any other cause the director determines to be so serious and
25 compelling as to affect responsibility as a state contractor, including
26 debarment by another governmental entity for any cause listed in
27 regulations.

28 (3) The director must issue a written decision to debar. The
29 decision must:

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

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

33 NEW SECTION. **Sec. 22.** TRANSPARENCY. (1) Agencies must annually
34 submit to the department a list of all contracts that the agency has
35 entered into or renewed. "Contracts," for the purposes of this
36 section, does not include purchase orders. The department must
37 maintain a publicly available list of all contracts entered into by

1 agencies during each fiscal year, except that contracts for the
2 employment of expert witnesses for the purposes of litigation shall not
3 be made publicly available to the extent that information is exempt
4 from disclosure under state law. Except as otherwise exempt, the data
5 must identify the contracting agency, the contractor, the purpose of
6 the contract, effective dates and periods of performance, the cost of
7 the contract and funding source, any substantive modifications to the
8 contract, and whether the contract was competitively procured or
9 awarded on a sole source basis.

10 (2) The department may conduct audits of its master contracts and
11 convenience contracts to ensure that the contractor is in compliance
12 with the contract terms and conditions, including but not limited to
13 providing only the goods and services specified in the contract at the
14 contract price.

15 NEW SECTION. **Sec. 23.** CONTRACT AUDITS AND INVESTIGATIVE
16 FINDINGS--REPORT BY STATE AUDITOR AND ATTORNEY GENERAL. The state
17 auditor and the attorney general must annually by November 30th of each
18 year, provide a collaborative report of contract audit and
19 investigative findings, enforcement actions, and the status of agency
20 resolution to the governor and the policy and fiscal committees of the
21 legislature.

22 **Sec. 24.** RCW 43.19.005 and 2011 1st sp.s. c 43 s 103 are each
23 amended to read as follows:

24 (1) The department of enterprise services is created as an
25 executive branch agency. The department is vested with all powers and
26 duties transferred to it under chapter 43, Laws of 2011 1st sp. sess.
27 and such other powers and duties as may be authorized by law.

28 (2) In addition to the powers and duties as provided in chapter 43,
29 Laws of 2011 1st sp. sess., the department shall(+

30 ~~a~~)) provide products and services to support state agencies, and
31 may enter into agreements with any other governmental entity or a
32 public benefit nonprofit organization, in compliance with RCW
33 39.34.055, to furnish such products and services as deemed appropriate
34 by both parties. The agreement shall provide for the reimbursement to
35 the department of the reasonable cost of the products and services

1 furnished. All governmental entities of this state may enter into such
2 agreements, unless otherwise prohibited(~~(; and~~

3 ~~(b) Make available to state, local, and federal agencies, local~~
4 ~~governments, and public benefit nonprofit corporations on a full cost-~~
5 ~~recovery basis information and printing services to include equipment~~
6 ~~acquisition assistance, including leasing, brokering, and establishing~~
7 ~~master contracts. For the purposes of this section "public benefit~~
8 ~~nonprofit corporation" means a public benefit nonprofit corporation as~~
9 ~~defined in RCW 24.03.005 that is receiving local, state, or federal~~
10 ~~funds either directly or through a public agency other than an Indian~~
11 ~~tribe or political subdivision of another state)).~~

12 **Sec. 25.** RCW 43.19.725 and 2011 c 358 s 2 are each amended to read
13 as follows:

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

28 (2) (~~(All state purchasing agencies)~~) The department, the
29 department of transportation, and institutions of higher education as
30 defined in RCW 28B.10.016 may adopt the model plan developed by the
31 department (~~(of general administration)~~) under subsection (1) of this
32 section. (~~(A state purchasing agency that)~~) If the agency does not
33 adopt the model plan, it must establish and implement a plan consistent
34 with the goals of subsection (1) of this section.

35 (3) To facilitate the participation of small businesses in the
36 provision of goods and services to the state, including purchases under
37 chapters 39.29 and 43.105 RCW, the (~~(state purchasing and material~~

1 ~~control~~) director, under the powers granted (~~by RCW 43.19.190 through~~
2 ~~43.19.1939~~) under this chapter, and (~~all state purchasing agencies~~)
3 the department, the department of transportation, and institutions of
4 higher education as defined in RCW 28B.10.016 operating under delegated
5 authority granted under this chapter or RCW (~~43.19.190 or~~)
6 28B.10.029, must give technical assistance to small businesses
7 regarding the state bidding process. Such technical assistance shall
8 include providing opportunities for the agency to answer vendor
9 questions about the bid solicitation requirements in advance of the bid
10 due date and, upon request, holding a debriefing after the contract
11 award to assist the vendor in understanding how to improve his or her
12 responses for future competitive procurements.

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

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

25 (~~(5) The definitions in this subsection apply throughout this~~
26 ~~section and RCW 43.19.727 unless the context clearly requires~~
27 ~~otherwise.~~

28 (~~(a) "Small business" has the same meaning as defined in RCW~~
29 ~~39.29.006.~~

30 (~~(b) "State purchasing agencies" are limited to the department of~~
31 ~~general administration, the department of information services, the~~
32 ~~office of financial management, the department of transportation, and~~
33 ~~institutions of higher education.)~~)

34 **Sec. 26.** RCW 43.19.727 and 2011 c 358 s 3 are each amended to read
35 as follows:

36 (1) By November 15, 2013, and November 15th every two years
37 thereafter, (~~all state purchasing agencies~~) the department, the

1 department of transportation, and institutions of higher education as
2 defined in RCW 28B.10.016 shall submit a report to the appropriate
3 committees of the legislature providing verifiable information
4 regarding the effects the technical assistance under RCW 43.19.725(3)
5 is having on the number of small businesses annually receiving state
6 contracts for goods and services purchased by the state.

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

12 (3)(a) The department (~~of general administration~~), in
13 consultation with (~~the department of information services,~~) the
14 department of transportation(~~(7)~~) and the department of commerce, must
15 develop and implement a web-based information system. The web-based
16 information system must be used to capture data, track outcomes, and
17 provide accurate and verifiable information regarding the effects the
18 technical assistance under RCW 43.19.725(3) is having on the number of
19 small businesses annually receiving state contracts for goods and
20 services purchased by the state. Such measurable data shall include,
21 but not be limited to: (i) The number of registered small businesses
22 that have been awarded state procurement contracts, (ii) the percentage
23 of total state dollars spent for goods and services purchased from
24 registered small businesses, and (iii) the number of registered small
25 businesses that have bid on but were not awarded state purchasing
26 contracts.

27 (b) (~~By October 1, 2011, the department of general administration,~~
28 ~~in collaboration with the department of information services and the~~
29 ~~department of transportation, shall submit a report to the appropriate~~
30 ~~committees of the legislature detailing the projected cost associated~~
31 ~~with the implementation and maintenance of the web-based information~~
32 ~~system.~~

33 (~~e~~) By September 1, 2012, the department (~~of general~~
34 ~~administration~~), in collaboration with (~~the department of information~~
35 ~~services and~~) the department of transportation, shall submit a report
36 to the appropriate committees of the legislature providing any
37 recommendations for needed legislation to improve the collection of
38 data required under (a) of this subsection.

1 (~~(d)~~) (c) By December 31, 2013, the department (~~(of general~~
2 ~~administration)~~) must make the web-based information system available
3 to all state purchasing agencies.

4 (~~(e)~~) (d) The department (~~(of general administration)~~) may also
5 make the web-based information system available to other agencies that
6 would like to use the system for the purposes of chapter 358, Laws of
7 2011.

8 NEW SECTION. **Sec. 27.** RCW 43.19.1932, 43.19.530, 43.19.534,
9 43.19.535, 43.19.536, 43.19.538, 43.19.539, 43.19.700, 43.19.702,
10 43.19.704, 43.19.797, and 39.29.052 are each recodified as sections in
11 chapter 39.--- RCW (the new chapter created in section 29 of this act).

12 NEW SECTION. **Sec. 28.** The following acts or parts of acts are
13 each repealed:

14 (1) RCW 43.19.180 (State purchasing and material control--
15 Director's responsibility) and 2011 1st sp.s. c 43 s 205, 2009 c 549 s
16 5063, 1975-'76 2nd ex.s. c 21 s 1, & 1965 c 8 s 43.19.180;

17 (2) RCW 43.19.185 (State purchasing and material control--System
18 for the use of credit cards or similar devices to be developed--Rules)
19 and 2011 1st sp.s. c 43 s 206, 1987 c 47 s 1, & 1982 1st ex.s. c 45 s
20 1;

21 (3) RCW 43.19.190 (State purchasing and material control--
22 Director's powers and duties--Rules) and 2011 1st sp.s c 43 s 805, 2011
23 1st sp.s. c 43 s 207, 2002 c 200 s 3, 1995 c 269 s 1401, 1994 c 138 s
24 1, 1993 sp.s. c 10 s 2, 1993 c 379 s 102, & 1991 c 238 s 135;

25 (4) RCW 43.19.1901 ("Purchase" includes leasing or renting--
26 Electronic data processing equipment excepted) and 1987 c 434 s 23,
27 1983 c 3 s 102, & 1967 ex.s. c 104 s 1;

28 (5) RCW 43.19.1905 (Statewide policy for purchasing and material
29 control--Definitions) and 2011 1st sp.s. c 43 s 208, 2009 c 486 s 10,
30 & 2008 c 215 s 4;

31 (6) RCW 43.19.19052 (Initial purchasing and material control
32 policy--Legislative intent--Agency cooperation) and 2011 1st sp.s. c 43
33 s 209, 1998 c 245 s 54, 1995 c 269 s 1403, 1986 c 158 s 9, 1979 c 151
34 s 98, & 1975-'76 2nd ex.s. c 21 s 6;

35 (7) RCW 43.19.1906 (Competitive bids--Procedure--Exceptions) and

1 2011 1st sp.s. c 43 s 210, 2008 c 215 s 5, 2006 c 363 s 1, & 2002 c 332
2 s 4;

3 (8) RCW 43.19.1908 (Bids--Solicitation--Qualified bidders) and 2011
4 1st sp.s. c 43 s 211, 2009 c 486 s 11, 2006 c 363 s 2, 1994 c 300 s 2,
5 & 1965 c 8 s 43.19.1908;

6 (9) RCW 43.19.1911 (Competitive bids--Notice of modification or
7 cancellation--Cancellation requirements--Lowest responsible bidder--
8 Preferential purchase--Life cycle costing) and 2006 c 363 s 3, 2005 c
9 204 s 5, 2003 c 136 s 6, 1996 c 69 s 2, 1989 c 431 s 60, 1983 c 183 s
10 4, 1980 c 172 s 8, & 1965 c 8 s 43.19.1911;

11 (10) RCW 43.19.1913 (Rejection of bid for previous unsatisfactory
12 performance) and 2011 1st sp.s. c 43 s 212 & 1965 c 8 s 43.19.1913;

13 (11) RCW 43.19.1914 (Low bidder claiming error--Prohibition on
14 later bid for same project) and 1996 c 18 s 7;

15 (12) RCW 43.19.1915 (Bidder's bond--Annual bid bond) and 2011 1st
16 sp.s. c 43 s 213, 2009 c 549 s 5064, & 1965 c 8 s 43.19.1915;

17 (13) RCW 43.19.1937 (Acceptance of benefits, gifts, etc.,
18 prohibited--Penalties) and 2009 c 549 s 5065, 1995 c 269 s 1405, 1975-
19 '76 2nd ex.s. c 21 s 13, & 1965 c 8 s 43.19.1937;

20 (14) RCW 43.19.1939 (Unlawful to offer, give, accept, benefits as
21 inducement for or to refrain from bidding--Penalty) and 2003 c 53 s 226
22 & 1965 c 8 s 43.19.1939; and

23 (15) RCW 43.19.200 (Duty of others in relation to purchases--
24 Emergency purchases--Written notifications) and 2011 1st sp.s. c 43 s
25 221, 2009 c 549 s 5066, 1986 c 158 s 10, 1984 c 102 s 2, 1971 c 81 s
26 111, & 1965 c 8 s 43.19.200.

27 NEW SECTION. **Sec. 29.** Sections 1 through 23 of this act
28 constitute a new chapter in Title 39 RCW.

29 NEW SECTION. **Sec. 30.** This act takes effect January 1, 2013.

30 NEW SECTION. **Sec. 31.** If any provision of this act or its
31 application to any person or circumstance is held invalid, the
32 remainder of the act or the application of the provision to other
33 persons or circumstances is not affected.

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