
SENATE BILL 5717

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By Senators Baumgartner, Tom, Smith, Bailey, Braun, Schoesler, Holmquist Newbry, and Brown

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1 AN ACT Relating to competitive contracting; and amending RCW
2 41.06.142, 43.41A.075, and 43.19.008.

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

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

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

12 (a) The invitation for bid or request for proposal contains
13 measurable standards for the performance of the contract;

14 (b) Employees in the classified service whose positions or work
15 would be displaced by the contract are provided an opportunity to offer
16 alternatives to purchasing services by contract and, if these
17 alternatives are not accepted, compete for the contract under
18 competitive contracting procedures in subsection (4) of this section;

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

4 (d) The department, agency, or institution of higher education has
5 established a contract monitoring process to measure contract
6 performance, costs, service delivery quality, and other contract
7 standards, and to cancel contracts that do not meet those standards;
8 and

9 (e) The department, agency, or institution of higher education has
10 determined that the contract results in savings or efficiency
11 improvements. The contracting agency must consider the consequences
12 and potential mitigation of improper or failed performance by the
13 contractor.

14 (2) Any provision contrary to or in conflict with this section in
15 any collective bargaining agreement in effect on July 1, 2005, is not
16 effective beyond the expiration date of the agreement.

17 (3) Contracting for services that is expressly mandated by the
18 legislature or was authorized by law prior to July 1, 2005, including
19 contracts and agreements between public entities, shall not be subject
20 to the processes set forth in subsections (1), (4), and (5) of this
21 section.

22 (4) Competitive contracting shall be implemented as follows:

23 (a) At least ninety days prior to the date the contracting agency
24 requests bids from private entities for a contract for services
25 provided by classified employees, the contracting agency shall notify
26 the classified employees whose positions or work would be displaced by
27 the contract. The employees shall have sixty days from the date of
28 notification to offer alternatives to purchasing services by contract,
29 and the agency shall consider the alternatives before requesting bids.

30 (b) If the employees decide to compete for the contract, they shall
31 notify the contracting agency of their decision. Employees must form
32 one or more employee business units for the purpose of submitting a bid
33 or bids to perform the services.

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

1 (d) The director of enterprise services, with the advice and
2 assistance of the office of financial management, shall, by rule,
3 establish procedures to ensure that bids are submitted and evaluated in
4 a fair and objective manner and that there exists a competitive market
5 for the service. Such rules shall include, but not be limited to: (i)
6 Prohibitions against participation in the bid evaluation process by
7 employees who prepared the business unit's bid or who perform any of
8 the services to be contracted; (ii) provisions to ensure no bidder
9 receives an advantage over other bidders and that bid requirements are
10 applied equitably to all parties; and (iii) procedures that require the
11 contracting agency to receive complaints regarding the bidding process
12 and to consider them before awarding the contract. Appeal of an
13 agency's actions under this subsection is an adjudicative proceeding
14 and subject to the applicable provisions of chapter 34.05 RCW, the
15 administrative procedure act, with the final decision to be rendered by
16 an administrative law judge assigned under chapter 34.12 RCW.

17 (e) An employee business unit's bid must include the fully
18 allocated costs of the service, including the cost of the employees'
19 salaries and benefits, space, equipment, materials, and other costs
20 necessary to perform the function. An employee business unit's cost
21 shall not include the state's indirect overhead costs unless those
22 costs can be attributed directly to the function in question and would
23 not exist if that function were not performed in state service.

24 (f) A department, agency, or institution of higher education may
25 contract with the department of enterprise services to conduct the
26 bidding process.

27 (5) As used in this section:

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

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

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

1 (6) The processes set forth in subsections (1), (4), and (5) of
2 this section do not apply to:

3 (a) RCW 74.13.031(~~(+5)~~) (6);

4 (b) The acquisition of printing services by a state agency; and

5 (c) Contracting for services or activities by the department of
6 enterprise services under RCW 43.19.008 and the department may continue
7 to contract for such services and activities after June 30, 2018.

8 (7) The processes set forth in subsections (1), (4), and (5) of
9 this section do not apply to the consolidated technology services
10 agency and the department of enterprise services when contracting for
11 services or activities as follows:

12 (a) Contracting for services and activities that are necessary to
13 establish, operate, or manage the state data center, including
14 architecture, design, engineering, installation, and operation of the
15 facility that are approved by the technology services board created in
16 RCW 43.41A.070.

17 (b) Contracting for services and activities recommended by the
18 chief information officer through a business plan and approved by the
19 technology services board created in RCW 43.41A.070.

20 **Sec. 2.** RCW 43.41A.075 and 2011 1st sp.s. c 43 s 716 are each
21 amended to read as follows:

22 The board shall have the following powers and duties related to
23 information services:

24 (1) To review and approve standards and procedures, developed by
25 the office of the chief information officer, governing the acquisition
26 and disposition of equipment, proprietary software, and purchased
27 services, licensing of the radio spectrum by or on behalf of state
28 agencies, and confidentiality of computerized data;

29 (2) To review and approve statewide or interagency technical
30 policies, standards, and procedures developed by the office of the
31 chief information officer;

32 (3) To review, approve, and provide oversight of major information
33 technology projects to ensure that no major information technology
34 project proposed by a state agency is approved or authorized funding by
35 the board without consideration of the technical and financial business
36 case for the project, including a review of:

37 (a) The total cost of ownership across the life of the project;

1 (b) All major technical options and alternatives analyzed, and
2 reviewed, if necessary, by independent technical sources; and

3 (c) Whether the project is technically and financially justifiable
4 when compared against the state's enterprise-based strategy, long-term
5 technology trends, and existing or potential partnerships with private
6 providers or vendors;

7 (4) To review and approve standards and common specifications for
8 new or expanded telecommunications networks proposed by agencies,
9 public postsecondary education institutions, educational service
10 districts, or statewide or regional providers of K-12 information
11 technology services, and to assure the cost-effective development and
12 incremental implementation of a statewide video telecommunications
13 system to serve: Public schools; educational service districts;
14 vocational-technical institutes; community colleges; colleges and
15 universities; state and local government; and the general public
16 through public affairs programming;

17 (5) To develop a policy to determine whether a proposed project,
18 product, or service should undergo an independent technical and
19 financial analysis prior to submitting a request to the office of
20 financial management for the inclusion in any proposed operating,
21 capital, or transportation budget;

22 (6) To approve contracting for services and activities under RCW
23 41.06.142(7) for the consolidated technology service agency and the
24 department of enterprise services. To approve any service or activity
25 to be contracted under RCW 41.06.142(7)(b), the board must also review
26 the proposed business plan and recommendation submitted by the office;

27 (7) To consider, on an ongoing basis, ways to promote strategic
28 investments in enterprise-level information technology projects that
29 will result in service improvements and cost efficiency;

30 (8) To provide a forum to solicit external expertise and
31 perspective on developments in information technology, enterprise
32 architecture, standards, and policy development; and

33 (9) To provide a forum where ideas and issues related to
34 information technology plans, policies, and standards can be reviewed.

35 **Sec. 3.** RCW 43.19.008 and 2011 1st sp.s. c 43 s 104 are each
36 amended to read as follows:

1 (1) The executive powers and management of the department shall be
2 administered as described in this section.

3 (2) The executive head and appointing authority of the department
4 is the director. The director is appointed by the governor, subject to
5 confirmation by the senate. The director serves at the pleasure of the
6 governor. The director is paid a salary fixed by the governor in
7 accordance with RCW 43.03.040. If a vacancy occurs in the position of
8 director while the senate is not in session, the governor shall make a
9 temporary appointment until the next meeting of the senate at which
10 time he or she shall present to that body his or her nomination for the
11 position.

12 (3) The director may employ staff members, who are exempt from
13 chapter 41.06 RCW, and any additional staff members as are necessary to
14 administer this chapter, and such other duties as may be authorized by
15 law. The director may delegate any power or duty vested in him or her
16 by chapter 43, Laws of 2011 1st sp. sess. or other law, including
17 authority to make final decisions and enter final orders in hearings
18 conducted under chapter 34.05 RCW.

19 (4) The internal affairs of the department are under the control of
20 the director in order that the director may manage the department in a
21 flexible and intelligent manner as dictated by changing contemporary
22 circumstances. Unless specifically limited by law, the director has
23 complete charge and supervisory powers over the department. The
24 director may create the administrative structures as the director deems
25 appropriate, except as otherwise specified by law, and the director may
26 employ personnel as may be necessary in accordance with chapter 41.06
27 RCW, except as otherwise provided by law.

28 (5) Until June 30, 2018, at the beginning of each fiscal biennium,
29 the office of financial management shall conduct a review of the
30 programs and services that are performed by the department to determine
31 whether the program or service may be performed by the private sector
32 in a more cost-efficient (~~and~~) or effective manner than being
33 performed by the department. In conducting this review, the office of
34 financial management shall:

35 (a) Examine the existing activities currently being performed by
36 the department, including but not limited to an examination of services
37 for their performance, staffing, capital requirements, and mission.

1 Programs may be broken down into discrete services or activities or
2 reviewed as a whole; and

3 (b) Examine the activities to determine which specific services are
4 available in the marketplace and what potential for efficiency gains or
5 savings exist.

6 (i) As part of the review in this subsection (5), the office of
7 financial management shall select up to six activities or services that
8 have been determined as an activity that may be provided by the private
9 sector in a cost-effective and efficient manner, including for the
10 2011-2013 fiscal biennium the bulk printing services and for the 2013-
11 2015 fiscal biennium the motor pool vehicle fleet management, custodial
12 services, and real estate lease brokering. The office of financial
13 management may consult with affected industry stakeholders in making
14 its decision on which activities to contract for services. Priority
15 for selection shall be given to agency activities or services that are
16 significant, ongoing functions.

17 (ii) The office of financial management must consider the
18 consequences and potential mitigation of improper or failed performance
19 by the contractor.

20 (iii) For each of the selected activities, the department shall use
21 a request for information, request for proposal, or other procurement
22 process to determine if a contract for the activity would result in the
23 activity being provided at a reduced cost (~~and~~) or with greater
24 efficiency.

25 (iv) The request for information, request for proposal, or other
26 procurement process must contain measurable standards for the
27 performance of the contract.

28 (v) The department may contract with one or more vendors to provide
29 the service as a result of the procurement process.

30 (vi) If the office of financial management determines via the
31 procurement process that the activity cannot be provided by the private
32 sector at a reduced cost (~~and~~) or greater efficiency, the department
33 of enterprise services may cancel the procurement without entering into
34 a contract and shall promptly notify the legislative fiscal committees
35 of such a decision.

36 (vii) The department of enterprise services, in consultation with
37 the office of financial management, must establish a contract
38 monitoring process to measure contract performance, costs, service

1 delivery quality, and other contract standards, and to cancel contracts
2 that do not meet those standards. No contracts may be renewed without
3 a review of these measures.

4 (viii) The office of financial management shall prepare a biennial
5 report summarizing the results of the examination of the agency's
6 programs and services. In addition to the programs and services
7 examined and the result of the examination, the report shall provide
8 information on any procurement process that does not result in a
9 contract for the services. During each regular legislative session
10 held in odd-numbered years, the legislative fiscal committees shall
11 hold a public hearing on the report and the department's activities
12 under this section.

13 (ix) The joint legislative audit and review committee shall conduct
14 an audit of the implementation of this subsection (5), and report to
15 the legislature by January 1, 2018, on the results of the audit. The
16 report must include an estimate of additional costs or savings to
17 taxpayers as a result of the contracting out provisions.

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