

Chapter 39.26 RCW
Procurement of goods and services

RCW Sections

- 39.26.005 Intent.
- 39.26.010 Definitions.
- 39.26.020 Ethics in public contracting.
- 39.26.030 State procurement records -- Disclosure.
- 39.26.040 Prohibition on certain contracts.
- 39.26.050 Provision of goods and services.
- 39.26.060 Cooperative purchasing.
- 39.26.070 Convenience contracts.
- 39.26.080 Procurement policy -- Director's responsibility and authority -- Master contracts.
- 39.26.090 Director's duties and responsibilities -- Rules.
- 39.26.100 Exemptions.
- 39.26.102 Exemption -- Department of corrections.
- 39.26.110 Training.
- 39.26.120 Competitive solicitation.
- 39.26.125 Competitive solicitation -- Exceptions.
- 39.26.130 Emergency purchases.
- 39.26.140 Sole source contracts.
- 39.26.150 Public notice -- Posting on enterprise vendor registration and bid notification system.
- 39.26.160 Bid awards -- Considerations -- Requirements and criteria to be set forth -- Negotiations -- Use of enterprise vendor registration and bid notification system.
- 39.26.170 Complaints -- Protests.
- 39.26.180 Contract management.
- 39.26.190 Bonds.
- 39.26.200 Authority to debar.
- 39.26.210 List of agency contracts -- Contract audits.
- 39.26.220 Contract audit and investigative findings, enforcement actions, and status of agency resolution -- Report.
- 39.26.230 Purchases from entities serving or providing opportunities through community rehabilitation programs.
- 39.26.235 Purchase of wireless devices or services.
- 39.26.240 Awards of procurement contracts to veteran-owned businesses.
- 39.26.245 Awards of procurement contracts to office of minority and women's business enterprises.
- 39.26.250 Preferences -- Purchase of goods and services from inmate work programs.
- 39.26.251 Purchase of articles or products from inmate work programs -- Replacement of goods and services obtained from outside the state -- Rules.
- 39.26.255 Preferences -- Purchase of products containing recycled material -- Directory of suppliers -- Rules.
- 39.26.260 Preferences -- In-state procurement.
- 39.26.265 Preferences -- Purchase of electronic products meeting environmental performance standards -- Requirements for surplus electronic products.

39.26.270 List of statutes and regulations of each state that grants preference to in-state vendors.

39.26.271 Rules for reciprocity in bidding.

39.26.900 Effective date -- 2012 c 224.

39.26.005**Intent. (effective january 1, 2013.)**

It is the intent of this chapter to promote open competition and transparency for all contracts for goods and services entered into by state agencies, unless specifically exempted under this chapter. It is further the intent of this chapter to centralize within one agency the authority and responsibility for the development and oversight of policies related to state procurement and contracting. To ensure the highest ethical standards, proper accounting for contract expenditures, and for ease of public review, it is further the intent to centralize the location of information about state procurements and contracts. It is also the intent of the legislature to provide state agency contract data to the public in a searchable manner.

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

[2012 c 224 § 1.]

39.26.010**Definitions. (effective january 1, 2013.)**

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

(1) "Agency" means any state office or activity of the executive and judicial branches of state government, including state agencies, departments, offices, divisions, boards, commissions, institutions of higher education as defined in RCW 28B.10.016, and correctional and other types of institutions.

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

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

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

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

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

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

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

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

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

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

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

- (7) "Competitive solicitation" means a documented formal process providing an equal and open opportunity to bidders and culminating in a selection based on predetermined criteria.
- (8) "Contractor" means an individual or entity awarded a contract with an agency to perform a service or provide goods.
- (9) "Debar" means to prohibit a contractor, individual, or other entity from submitting a bid, having a bid considered, or entering into a state contract during a specified period of time as set forth in a debarment order.
- (10) "Department" means the department of enterprise services.
- (11) "Director" means the director of the department of enterprise services.
- (12) "Estimated useful life" of an item means the estimated time from the date of acquisition to the date of replacement or disposal, determined in any reasonable manner.
- (13) "Goods" means products, materials, supplies, or equipment provided by a contractor.
- (14) "In-state business" means a business that has its principal office located in Washington.
- (15) "Life-cycle cost" means the total cost of an item to the state over its estimated useful life, including costs of selection, acquisition, operation, maintenance, and where applicable, disposal, as far as these costs can reasonably be determined, minus the salvage value at the end of its estimated useful life.
- (16) "Master contracts" means a contract for specific goods or services, or both, that is solicited and established by the department in accordance with procurement laws and rules on behalf of and for general use by agencies as specified by the department.
- (17) "Microbusiness" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that: (a) is owned and operated independently from all other businesses; and (b) has a gross revenue of less than one million dollars annually as reported on its federal tax return or on its return filed with the department of revenue.
- (18) "Minibusiness" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that: (a) is owned and operated independently from all other businesses; and (b) has a gross revenue of less than three million dollars, but one million dollars or more annually as reported on its federal tax return or on its return filed with the department of revenue.
- (19) "Purchase" means the acquisition of goods or services, including the leasing or renting of goods.
- (20) "Services" means labor, work, analysis, or similar activities provided by a contractor to accomplish a specific scope of work.
- (21) "Small business" means an in-state business, including a sole proprietorship, corporation, partnership, or other legal entity, that:
- (a) Certifies, under penalty of perjury, that it is owned and operated independently from all other businesses and has either:
 - (i) Fifty or fewer employees; or
 - (ii) A gross revenue of less than seven million dollars annually as reported on its federal income tax return or its return filed with the department of revenue over the previous three consecutive years; or
 - (b) Is certified with the office of women and minority business enterprises under chapter 39.19 RCW.
- (22) "Sole source" means a contractor providing goods or services of such a unique nature or sole availability at the location required that the contractor is clearly and justifiably the only practicable source to provide the goods or services.
- (23) "Washington grown" has the definition in RCW 15.64.060.

[2012 c 224 § 2.]

Notes:

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

39.26.020

Ethics in public contracting. (effective january 1, 2013.)

(1)(a) A state officer or employee of an agency who seeks to acquire goods or services or who participates in those contractual matters is subject to the requirements in RCW 42.52.150.

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

(2) No person or entity who seeks or may seek a contract with a state agency may give, loan, transfer, or deliver to any person something of economic value for which receipt of such item would cause a state officer or employee to be in a violation of RCW 42.52.040, 42.52.110, 42.52.120, 42.52.140, or 42.52.150.

[2012 c 224 § 3.]

39.26.030**State procurement records — disclosure. (effective january 1, 2013.)**

(1) Records related to state procurements are public records subject to disclosure to the extent provided in chapter 42.56 RCW except as provided in subsection (2) of this section.

(2) Bid submissions and bid evaluations are exempt from disclosure until the agency announces the apparent successful bidder.

[2012 c 224 § 4.]

39.26.040**Prohibition on certain contracts. (effective january 1, 2013.)**

Agencies that are authorized or directed to establish a board, commission, council, committee, or other similar group made up of volunteers to advise the activities and management of the agency are prohibited from entering into contracts with any or all volunteer members as a means to reimburse or otherwise pay members of such board, commission, council, committee, or other similar group for the work performed as part of the entity, except where payment is specifically authorized by statute.

[2012 c 224 § 5.]

39.26.050**Provision of goods and services. (effective january 1, 2013.)**

(1) In addition to the powers and duties provided in chapter 43.19 RCW, the department shall make available goods and services to support state agencies, and may enter into agreements with any other local or federal governmental agency or entity or a public benefit nonprofit organization, in compliance with RCW 39.34.055, and any tribes located in the state, to furnish such products and services as deemed appropriate by both parties.

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

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

[2012 c 224 § 6.]

39.26.060**Cooperative purchasing. (effective january 1, 2013.)**

(1) On behalf of the state, the department may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any goods or services with one or more states, state agencies, local governments, local government agencies, federal agencies, or tribes located in the state, in accordance with an agreement entered into between the participants. The cooperative purchasing may include, but is not limited to, joint or multiparty contracts between the entities, and master contracts or convenience contracts that are made available to other public agencies.

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

[2012 c 224 § 7.]

39.26.070**Convenience contracts. (effective january 1, 2013.)**

A convenience contract is a contract for specific goods or services, or both, that is solicited and established by the department in accordance with procurement laws and rules on behalf of and for use by a specific agency or group of agencies as needed from time to time. A convenience contract is not available for general use and may only be used as specified by the department.

[2012 c 224 § 8.]

39.26.080**Procurement policy — director's responsibility and authority — master contracts. (effective january 1, 2013.)**

(1) The director is responsible for the development and oversight of policy for the procurement of goods and services by all state agencies under this chapter. When establishing policies, standards, and procedures, the director shall account for differentiation in procurement practices and needs among state agencies and strive to establish policies, standards, and procedures that promote greater efficiency in procurement.

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

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

[2012 c 224 § 9.]

39.26.090**Director's duties and responsibilities — rules. (effective january 1, 2013.)**

The director shall:

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

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

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

(4) Enter into contracts or delegate the authority to enter into contracts on behalf of the state to facilitate the purchase, lease, rent, or otherwise acquire all goods and services and equipment needed for the support, maintenance, and use of all state agencies, except as provided in RCW 39.26.100;

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

(6) Develop procurement policies and procedures, such as unbundled contracting and subcontracting, that encourage and facilitate the purchase of goods and services from Washington small businesses, microbusinesses, and minibusinesses, and minority and women-owned businesses to the maximum extent practicable and consistent with international trade agreement commitments;

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

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

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

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

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

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

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

[2012 c 224 § 10.]

39.26.100

Exemptions. (effective january 1, 2013.)

(1) The provisions of this chapter do not apply in any manner to the operation of the state legislature except as requested by the legislature.

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

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

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

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

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

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

[2012 c 224 § 11.]

39.26.102

Exemption — department of corrections. (effective january 1, 2013.)

The department of corrections shall be exempt from the following provisions of this chapter in respect to goods or services purchased or sold pursuant to the operation of correctional industries: RCW *43.19.180, *43.19.190, *43.19.1901, *43.19.1905, *43.19.1906, *43.19.1908, *43.19.1911, *43.19.1913, *43.19.1915, 43.19.1917, 43.19.1919, 43.19.1921, and *43.19.200.

[2011 1st sp.s. c 43 § 220; 1989 c 185 § 2; 1981 c 136 § 14. Formerly RCW 43.19.1932.]

Notes:

***Reviser's note:** RCW 43.19.180, 43.19.190, 43.19.1901, 43.19.1905, 43.19.1906, 43.19.1908, 43.19.1911, 43.19.1913, 43.19.1915, and 43.19.200 were repealed by 2012 c 224 § 29, effective January 1, 2013.

Effective date -- Purpose -- 2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date -- 1981 c 136: See RCW 72.09.900.

39.26.110

Training. (effective january 1, 2013.)

(1) The department must provide expertise and training on best practices for state procurement.

(2) The department must establish either training or certification programs, or both, to ensure consistency in procurement practices for employees authorized to perform procurement functions under the provisions of this chapter. When establishing training or certification programs, the department may approve existing training or certification programs at state agencies. When establishing programs or approving existing programs, the department shall work with agencies with existing training programs to ensure coordination and minimize additional costs associated with training requirements.

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

[2012 c 224 § 12.]

39.26.120

Competitive solicitation. (effective january 1, 2013.)

(1) Insofar as practicable, all purchases of or contracts for goods and services must be based on a competitive solicitation

process. This process may include electronic or web-based solicitations, bids, and signatures. This requirement also applies to procurement of goods and services executed by agencies under delegated authority granted in accordance with RCW 39.26.090 or under RCW 28B.10.029.

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

[2012 c 224 § 13.]

39.26.125**Competitive solicitation — exceptions. (effective January 1, 2013.)**

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

- (1) Emergency contracts;
- (2) Sole source contracts that comply with the provisions of RCW 39.26.140;
- (3) Direct buy purchases, as designated by the director. The director shall establish policies to define criteria for direct buy purchases. These criteria may be adjusted to accommodate special market conditions and to promote market diversity for the benefit of the citizens of the state of Washington;
- (4) Purchases involving special facilities, services, or market conditions, in which instances of direct negotiation is in the best interest of the state;
- (5) Purchases from master contracts established by the department or an agency authorized by the department;
- (6) Client services contracts;
- (7) Other specific contracts or classes or groups of contracts exempted from the competitive solicitation process when the director determines that a competitive solicitation process is not appropriate or cost-effective;
- (8) Off-contract purchases of Washington grown food when such food is not available from Washington sources through an existing contract. However, Washington grown food purchased under this subsection must be of an equivalent or better quality than similar food available through the contract and must be able to be paid from the agency's existing budget. This requirement also applies to purchases and contracts for purchases executed by state agencies, including institutions of higher education as defined in RCW 28B.10.016, under delegated authority granted in accordance with this chapter or under RCW 28B.10.029;
- (9) Contracts awarded to companies that furnish a service where the tariff is established by the utilities and transportation commission or other public entity;
- (10) Intergovernmental agreements awarded to any governmental entity, whether federal, state, or local and any department, division, or subdivision thereof;
- (11) Contracts for services that are necessary to the conduct of collaborative research if the use of a specific contractor is mandated by the funding source as a condition of granting funds;
- (12) Contracts for architectural and engineering services as defined in RCW 39.80.020, which shall be entered into under chapter 39.80 RCW;
- (13) Contracts for the employment of expert witnesses for the purposes of litigation; and
- (14) Contracts for bank supervision authorized under RCW 30.38.040.

[2012 c 224 § 14.]

39.26.130**Emergency purchases. (effective January 1, 2013.)**

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

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

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

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

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

[2012 c 224 § 15.]

39.26.140

Sole source contracts. (effective january 1, 2013.)

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

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

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

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

[2012 c 224 § 16.]

39.26.150

Public notice — posting on enterprise vendor registration and bid notification system. (effective january 1, 2013.)

(1) Agencies must provide public notice for all competitive solicitations. Agencies must post all contract opportunities on the state's enterprise vendor registration and bid notification system. In addition, agencies may notify contractors and potential bidders by sending notices by mail, electronic transmission, newspaper advertisements, or other means as may be appropriate.

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

[2012 c 224 § 17.]

39.26.160

Bid awards — considerations — requirements and criteria to be set forth — negotiations — use of

enterprise vendor registration and bid notification system. (effective january 1, 2013.)

(1)(a) After bids that are submitted in response to a competitive solicitation process are reviewed by the awarding agency, the awarding agency may:

- (i) Reject all bids and rebid or cancel the competitive solicitation;
- (ii) Request best and final offers from responsive and responsible bidders; or
- (iii) Award the purchase or contract to the lowest responsive and responsible bidder.

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

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

- (a) The ability, capacity, and skill of the bidder to perform the contract or provide the service required;
- (b) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- (c) Whether the bidder can perform the contract within the time specified;
- (d) The quality of performance of previous contracts or services;
- (e) The previous and existing compliance by the bidder with laws relating to the contract or services; and
- (f) Such other information as may be secured having a bearing on the decision to award the contract.

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

- (a) Whether the bid satisfies the needs of the state as specified in the solicitation documents;
- (b) Whether the bid encourages diverse contractor participation;
- (c) Whether the bid provides competitive pricing, economies, and efficiencies;
- (d) Whether the bid considers human health and environmental impacts;
- (e) Whether the bid appropriately weighs cost and noncost considerations; and
- (f) Life-cycle cost.

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

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

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

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

[2012 c 224 § 18.]

39.26.170**Complaints — protests. (effective january 1, 2013.)**

(1) All agencies that have original or delegated procurement authority for goods or services must have a clear and transparent complaint process. The complaint process must provide for the complaint to be submitted and response provided before the deadline for bid submissions.

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

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

[2012 c 224 § 19.]

39.26.180**Contract management. (effective january 1, 2013.)**

(1) The department must adopt uniform policies and procedures for the effective and efficient management of contracts by all state agencies. The policies and procedures must, at a minimum, include:

- (a) Precontract procedures for selecting potential contractors based on their qualifications and ability to perform;
- (b) Model complaint and protest procedures;
- (c) Alternative dispute resolution processes;
- (d) Incorporation of performance measures and measurable benchmarks in contracts;
- (e) Model contract terms to ensure contract performance and compliance with state and federal standards;
- (f) Executing contracts using electronic signatures;
- (g) Criteria for contract amendments;
- (h) Postcontract procedures;
- (i) Procedures and criteria for terminating contracts for cause or otherwise; and
- (j) Any other subject related to effective and efficient contract management.

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

(3) To the extent practicable, agencies should enter into performance-based contracts. Performance-based contracts identify expected deliverables and performance measures or outcomes. Performance-based contracts also use appropriate techniques, which may include but are not limited to, either consequences or incentives or both to ensure that agreed upon value to the state is received. Payment for goods and services under performance-based contracts should be contingent on the contractor achieving performance outcomes.

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

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

[2012 c 224 § 20.]

39.26.190**Bonds. (effective january 1, 2013.)**

When any bid has been accepted, the agency may require of the successful bidder a bond payable to the state in such amount with such surety or sureties as determined by the agency, conditioned that he or she will fully, faithfully, and accurately

perform the terms of the contract into which he or she has entered. Bidders who regularly do business with the state shall be permitted to file with the agency an annual performance bond in an amount established by the agency and such annual bond shall be acceptable as surety in lieu of furnishing individual bonds. The agency may also require bidders to provide bid bonds conditioned that if a bidder is awarded the contract the bidder will enter into and execute the contract, protest bonds, or other bonds the agency deems necessary. Agencies must adhere to the policies developed by the department regarding the use of protest bonds. All bonds must be filed with the agency on a form acceptable to the agency. Any surety issuing a bond must meet the qualification requirements established by the agency.

[2012 c 224 § 21.]

39.26.200**Authority to debar. (effective january 1, 2013.)**

(1)(a) The director shall provide notice to the contractor of the director's intent to debar with the specific reason for the debarment. The department must establish the debarment process by rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[2012 c 224 § 22.]

39.26.210**List of agency contracts — contract audits. (effective january 1, 2013.)**

(1) Agencies must annually submit to the department a list of all contracts that the agency has entered into or renewed. "Contracts," for the purposes of this section, does not include purchase orders. The department must maintain a publicly available list of all contracts entered into by agencies during each fiscal year, except that contracts for the employment of expert witnesses for the purposes of litigation shall not be made publicly available to the extent that information is exempt from disclosure under state law. Except as otherwise exempt, the data must identify the contracting agency, the contractor, the purpose of the contract, effective dates and periods of performance, the cost of the contract and funding source, any substantive modifications to the contract, and whether the contract was competitively procured or awarded on a sole source basis.

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

[2012 c 224 § 23.]

39.26.220

Contract audit and investigative findings, enforcement actions, and status of agency resolution — report. (effective january 1, 2013.)

The state auditor and the attorney general must annually by November 30th of each year, provide a collaborative report of contract audit and investigative findings, enforcement actions, and the status of agency resolution to the governor and the policy and fiscal committees of the legislature.

[2012 c 224 § 24.]

39.26.230

Purchases from entities serving or providing opportunities through community rehabilitation programs. (effective january 1, 2013.)

The state agencies and departments are hereby authorized to purchase products and/or services manufactured or provided by community rehabilitation programs of the department of social and health services.

Such purchases shall be at the fair market price of such products and services as determined by the department of enterprise services. To determine the fair market price the department shall use the last comparable bid on the products and/or services or in the alternative the last price paid for the products and/or services. The increased cost of labor, materials, and other documented costs since the last comparable bid or the last price paid are additional cost factors which shall be considered in determining fair market price. Upon the establishment of the fair market price as provided for in this section the department is hereby empowered to negotiate directly for the purchase of products or services with officials in charge of the community rehabilitation programs of the department of social and health services.

[2011 1st sp.s. c 43 § 226; 2005 c 204 § 2; 2003 c 136 § 3; 1977 ex.s. c 10 § 2; 1974 ex.s. c 40 § 3. Formerly RCW 43.19.530.]

Notes:

Effective date -- Purpose -- 2011 1st sp.s. c 43: See notes following RCW 43.19.003.

39.26.235

Purchase of wireless devices or services. (effective january 1, 2013.)

(1) State agencies that are purchasing wireless devices or services must make such purchases through the state master contract, unless the state agency provides to the office of the chief information officer evidence that the state agency is securing its wireless devices or services from another source for a lower cost than through participation in the state master contract.

(2) For the purposes of this section, "state agency" means any office, department, board, commission, or other unit of state government, but does not include a unit of state government headed by a statewide elected official, an institution of higher

education as defined in RCW 28B.10.016, the student achievement council, the state board for community and technical colleges, or agencies of the legislative or judicial branches of state government.

[2012 c 229 § 584; 2011 1st sp.s. c 43 § 734; 2010 c 282 § 2. Formerly RCW 43.19.797, 43.105.410.]

Notes:

Effective date -- 2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Effective date -- Purpose -- 2011 1st sp.s. c 43: See notes following RCW 43.19.003.

39.26.240

Awards of procurement contracts to veteran-owned businesses. (effective january 1, 2013.)

All procurement contracts entered into under this chapter on or after June 10, 2010, are subject to the requirements established under RCW 43.60A.200.

[2010 c 5 § 9. Formerly RCW 39.29.052.]

Notes:

Purpose -- Construction -- 2010 c 5: See notes following RCW 43.60A.010.

39.26.245

Awards of procurement contracts to office of minority and women's business enterprises. (effective january 1, 2013.)

(1) All contracts entered into and purchases made, including leasing or renting, under this chapter on or after September 1, 1983, are subject to the requirements established under chapter 39.19 RCW.

(2) All procurement contracts entered into under this chapter on or after June 10, 2010, are subject to the requirements established under RCW 43.60A.200.

[2010 c 5 § 6; 1983 c 120 § 13. Formerly RCW 43.19.536.]

Notes:

Purpose -- Construction -- 2010 c 5: See notes following RCW 43.60A.010.

Effective date -- Applicability -- Severability -- Conflict with federal requirements -- 1983 c 120: See RCW 39.19.910, 39.19.920.

39.26.250

Preferences — purchase of goods and services from inmate work programs. (effective january 1, 2013.)

Any person, firm, or organization which makes any bid to provide any goods or any services to any state agency shall be granted a preference over other bidders if (1) the goods or services have been or will be produced or provided in whole or in part by an inmate work program of the department of corrections and (2) an amount equal to at least fifteen percent of the total bid amount has been paid or will be paid by the person, firm, or organization to inmates as wages. The preference provided under this section shall be equal to ten percent of the total bid amount.

[1981 c 136 § 15. Formerly RCW 43.19.535.]

Notes:

Effective date -- 1981 c 136: See RCW 72.09.900.

39.26.251**Purchase of articles or products from inmate work programs — replacement of goods and services obtained from outside the state — rules. (effective January 1, 2013.)**

(1) State agencies, the legislature, and departments shall purchase for their use all goods and services required by the legislature, agencies, or departments that are produced or provided in whole or in part from class II inmate work programs operated by the department of corrections through state contract. These goods and services shall not be purchased from any other source unless, upon application by the department or agency: (a) The department finds that the articles or products do not meet the reasonable requirements of the agency or department, (b) are not of equal or better quality, or (c) the price of the product or service is higher than that produced by the private sector. However, the criteria contained in (a), (b), and (c) of this subsection for purchasing goods and services from sources other than correctional industries do not apply to goods and services produced by correctional industries that primarily replace goods manufactured or services obtained from outside the state. The department of corrections and department shall adopt administrative rules that implement this section.

(2) During the 2009-2011 and 2011-2013 fiscal biennia, and in conformance with section 223(11), chapter 470, Laws of 2009 and section 221(2), chapter 367, Laws of 2011, this section does not apply to the purchase of uniforms by the Washington state ferries.

(3) Effective July 1, 2012, this section does not apply to the purchase of uniforms for correctional officers employed with the Washington state department of corrections.

[2012 c 220 § 1. Prior: 2011 1st sp.s. c 43 § 227; 2011 c 367 § 707; 2009 c 470 § 717; 1993 sp.s. c 20 § 1; 1986 c 94 § 2. Formerly RCW 43.19.534.]

Notes:

Effective date -- Purpose -- 2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date -- 2011 c 367: See note following RCW 47.29.170.

Effective date -- 2009 c 470: See note following RCW 46.68.170.

Severability -- 1993 sp.s. c 20: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 sp.s. c 20 § 9.]

39.26.255**Preferences — purchase of products containing recycled material — directory of suppliers — rules. (effective January 1, 2013.)**

(1) The director shall develop specifications and adopt rules for the purchase of products which will provide for preferential purchase of products containing recycled material by:

(a) The use of a weighting factor determined by the amount of recycled material in a product, where appropriate and known in advance to potential bidders, to determine the lowest responsible bidder. The actual dollars bid shall be the contracted amount. If the department determines, according to criteria established by rule that the use of this weighting factor does not encourage the use of more recycled material, the department shall consider and award bids without regard to the weighting factor. In making this determination, the department shall consider but not be limited to such factors as adequate competition, economics or environmental constraints, quality, and availability.

(b) Requiring a written statement of the percentage range of recycled content from the bidder providing products containing recycled [material]. The range may be stated in five percent increments.

(2) The director shall develop a directory of businesses that supply products containing significant quantities of recycled materials. This directory may be combined with and made accessible through the database of recycled content products to be developed under RCW 43.19A.060.

(3) The director shall encourage all parties using the state purchasing office to purchase products containing recycled materials.

(4) The rules, specifications, and bid evaluation shall be consistent with recycled content standards adopted under RCW 43.19A.020.

[2011 1st sp.s. c 43 § 228; 1991 c 297 § 5; 1988 c 175 § 2; 1987 c 505 § 26; 1982 c 61 § 2. Formerly RCW 43.19.538.]

Notes:

Effective date -- Purpose -- 2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Captions not law -- 1991 c 297: See RCW 43.19A.900.

Effective date -- 1988 c 175: "This act shall take effect July 1, 1988." [1988 c 175 § 4.]

Recycled product procurement: Chapter 43.19A RCW.

39.26.260

Preferences — in-state procurement. (effective January 1, 2013.)

The legislature finds that in-state preference clauses used by other states in procuring goods and services have a discriminatory effect against Washington vendors with resulting harm to this state's revenues and the welfare of this state's citizens. Chapter 183, Laws of 1983 is intended to promote fairness in state government procurement by requiring that, when appropriate, Washington exercise reciprocity with those states having in-state preferences, and it shall be liberally construed to that effect.

[1983 c 183 § 1. Formerly RCW 43.19.700.]

39.26.265

Preferences — purchase of electronic products meeting environmental performance standards — requirements for surplus electronic products. (effective January 1, 2013.)

(1) The department shall establish purchasing and procurement policies that establish a preference for electronic products that meet environmental performance standards relating to the reduction or elimination of hazardous materials.

(2) The department shall ensure that their surplus electronic products, other than those sold individually to private citizens, are managed only by registered transporters and by processors meeting the requirements of RCW 70.95N.250.

(3) The department shall ensure that their surplus electronic products are directed to legal secondary materials markets by requiring a chain of custody record that documents to whom the products were initially delivered through to the end use manufacturer.

[2011 1st sp.s. c 43 § 229; 2006 c 183 § 36. Formerly RCW 43.19.539.]

Notes:

Effective date -- Purpose -- 2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Construction -- Severability -- Effective date -- 2006 c 183: See RCW 70.95N.900 through 70.95N.902.

39.26.270

List of statutes and regulations of each state that grants preference to in-state vendors. (effective January 1, 2013.)

The director shall compile a list of the statutes and regulations, relating to state purchasing, of each state, which statutes and regulations the director believes grant a preference to vendors located within the state or goods manufactured within the state. At least once every twelve months the director shall update the list.

[2011 1st sp.s. c 43 § 240; 1983 c 183 § 2. Formerly RCW 43.19.702.]

Notes:

Effective date -- Purpose -- 2011 1st sp.s. c 43: See notes following RCW 43.19.003.

39.26.271**Rules for reciprocity in bidding. (effective january 1, 2013.)**

The director shall adopt and apply rules designed to provide for some reciprocity in bidding between Washington and those states having statutes or regulations on the list under *RCW 43.19.702. The director shall have broad discretionary power in developing these rules and the rules shall provide for reciprocity only to the extent and in those instances where the director considers it appropriate. For the purpose of determining the lowest responsible bidder pursuant to **RCW 43.19.1911, such rules shall (1) require the director to impose a reciprocity increase on bids when appropriate under the rules and (2) establish methods for determining the amount of the increase. In no instance shall such increase, if any, be paid to a vendor whose bid is accepted.

[2011 1st sp.s. c 43 § 241; 1983 c 183 § 3. Formerly RCW 43.19.704.]

Notes:

Reviser's note: *(1) RCW 43.19.702 was recodified as RCW 39.26.270 pursuant to 2012 c 224 § 28, effective January 1, 2013.

** (2) RCW 43.19.1911 was repealed by 2012 c 224 § 29, effective January 1, 2013.

Effective date -- Purpose -- 2011 1st sp.s. c 43: See notes following RCW 43.19.003.

39.26.900**Effective date — 2012 c 224.**

This act takes effect January 1, 2013.

[2012 c 224 § 31.]