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**SENATE BILL 5462**

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**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** Senators Ranker, Jayapal, Kohl-Welles, Hasegawa, Pedersen, Nelson, Hatfield, Frockt, Keiser, Habib, Conway, Cleveland, Chase, and Lias

Read first time 01/22/15. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to contractor compliance with laws prohibiting  
2 discrimination; and amending RCW 39.26.160 and 39.26.200.

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

4 **Sec. 1.** RCW 39.26.160 and 2012 c 224 s 18 are each amended to  
5 read as follows:

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

9 (i) Reject all bids and rebid or cancel the competitive  
10 solicitation;

11 (ii) Request best and final offers from responsive and  
12 responsible bidders; or

13 (iii) Award the purchase or contract to the lowest responsive and  
14 responsible bidder.

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

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

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

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

3 (c) Whether the bidder can perform the contract within the time  
4 specified;

5 (d) The quality of performance of previous contracts or services;

6 (e) The previous and existing compliance by the bidder with laws  
7 relating to the contract or services; (~~and~~)

8 (f) The previous and existing compliance by the bidder with  
9 federal and state laws prohibiting discrimination, including but not  
10 limited to Title VII of the civil rights act, the Americans with  
11 disabilities act, and chapter 49.60 RCW; and

12 (g) Such other information as may be secured having a bearing on  
13 the decision to award the contract.

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

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

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

20 (c) Whether the bid provides competitive pricing, economies, and  
21 efficiencies;

22 (d) Whether the bid considers human health and environmental  
23 impacts;

24 (e) Whether the bid appropriately weighs cost and noncost  
25 considerations; and

26 (f) Life-cycle cost.

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

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

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

38 (7) The procuring agency must enter into the state's enterprise  
39 vendor (~~{registration}~~) registration and bid notification system

1 the name of each bidder and an indication as to the successful  
2 bidder.

3 **Sec. 2.** RCW 39.26.200 and 2013 2nd sp.s. c 34 s 1 are each  
4 amended to read as follows:

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

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

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

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

20 (b) Conviction or a final determination in a civil action under  
21 state or federal statutes of fraud, embezzlement, theft, forgery,  
22 bribery, falsification or destruction of records, receiving stolen  
23 property, violation of the federal false claims act, 31 U.S.C. Sec.  
24 3729 et seq., or the state medicaid fraud false claims act, chapter  
25 74.66 RCW, or any other offense indicating a lack of business  
26 integrity or business honesty that currently, seriously, and directly  
27 affects responsibility as a state contractor;

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

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

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

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

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

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

8 (g) Violation of any federal or state law prohibiting  
9 discrimination, including but not limited to Title VII of the civil  
10 rights act, the Americans with disabilities act, and chapter 49.60  
11 RCW; and

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

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

- 18 (a) State the reasons for the action taken; and
- 19 (b) Inform the debarred contractor of the contractor's rights to  
20 judicial or administrative review.

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