

State of Washington
Joint Legislative Audit and Review Committee (JLARC)



Performance Audit of the Implementation of Competitive Contracting

Report 07-1

January 4, 2007

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JLARC staff, under the direction of the Committee and the Legislative Auditor, conduct performance audits, program evaluations, sunset reviews, and other policy and fiscal studies. These studies assess the efficiency and effectiveness of agency operations, impacts and outcomes of state programs, and levels of compliance with legislative direction and intent. The Committee makes recommendations to improve state government performance and to correct problems it identifies. The Committee also follows up on these recommendations to determine how they have been implemented. JLARC has, in recent years, received national recognition for a number of its major studies.

**PERFORMANCE AUDIT
OF THE
IMPLEMENTATION OF
COMPETITIVE
CONTRACTING
REPORT 07-1**

REPORT DIGEST
JANUARY 4, 2007



STATE OF WASHINGTON

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BACKGROUND

The competitive contracting provisions of **The Personnel System Reform Act of 2002** allow state agencies and institutions of higher education to contract for services customarily and historically provided by state employees. Agencies are permitted to use such **competitive contracting** beginning July 1, 2005, if they meet established criteria and follow a specified process, which includes:

- Consider possible risk, savings, and efficiency improvements;
- Give employees who's jobs would be displaced an opportunity to offer alternatives to contracting;
- Give employees an opportunity to form an Employee Business Unit and submit a bid, if the agency rejects the employee alternatives; and
- Monitor contracts by measuring performance, cost, and quality.

The Act also directs the Joint Legislative Audit and Review Committee (JLARC) to conduct a performance audit of the implementation of competitive contracting.

REPORT SUMMARY

This JLARC audit found that **few agencies have competitively contracted for services** in the 16 months since receiving authorization to do so. Agency managers reported two main reasons for not competitively contracting. First, managers perceive the process itself to be complicated and confusing, providing a disincentive to pursue competitive contracting. Second, competitive contracting is a **subject of collective bargaining**, which creates additional challenges by requiring labor negotiations. Managers must bargain, **at a minimum**, the impacts of competitive contracting. Additionally, some agency collective bargaining agreements include provisions which prohibit agencies from competitively contracting.

STUDY OBJECTIVES

This performance audit focuses on three main questions. First, are the statutory processes for competitive contracting in place? Second, what are agency experiences with competitive contracting? Third, do other states and the federal government provide employees the opportunity to offer alternatives or submit bids when contracting for services?

Are the Statutory Processes in Place?

The Personnel System Reform Act (placed into statute as RCW 41.06.142) establishes a process for competitive contracting. The Act includes direction to the Departments of General Administration and Personnel and the Office of Administrative Hearings to develop procedures and guidelines, which they have done. They cover:

- Measurable contract performance standards;
- Opportunities for employees to offer alternatives and to submit bids;
- Training for employees on establishing employee business units;
- Contract provisions requiring private entities to consider hiring displaced employees;
- Contract monitoring and termination, if necessary;
- Consideration of savings, efficiency improvements, and risk before contracting; and
- Process to allow for appeals of agency decisions.

What Are Agency Experiences with Competitive Contracting?

Competitive contracting has been authorized since July 1, 2005. Since no agency is responsible for tracking competitive contracts, JLARC staff surveyed and interviewed agency managers to determine how much competitive contracting has occurred. Three agencies told JLARC they have contracted for services using the provisions of the Personnel System Reform Act during the 16 months between authorization and this report: Yakima Valley Community College, Washington State Patrol, and Central Washington University.

In interviewing managers from 23 state agencies and institutions of higher education, JLARC staff found two main reasons why agencies were not competitively contracting:

- Managers *perceive* the process, as established in statute, rule, and the Department of General Administration's Competitive Contracting Manual, to be very **complicated** and confusing, providing a disincentive to competitively contract.
- Competitive contracting is a **subject of collective bargaining**. This means agencies and higher education institutions are required to bargain individual contracts. In addition, collective bargaining agreements can expressly exclude the option of competitive contracting. Thus, the competitive contracting process is intertwined with the complexities of collective bargaining and labor relations.

Because of both of these complexities, several managers said they wanted to wait and see how others' experiences worked so they could learn from others' successes and failures.

How Do Other States and the Federal Government Contract for Services?

JLARC staff looked to see if other states or the federal government have a similar approach to Washington for contracting services customarily done by state employees. Based on a select review of other states and the federal government, we found **no one common approach**. Rather, the contracting approaches in these governments involve a range of policies and experiences regarding employee bidding opportunities and are continually evolving and reacting to a variety of circumstances.

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CHAPTER ONE: BACKGROUND

INTRODUCTION TO COMPETITIVE CONTRACTING

In 2002, the Legislature passed Substitute House Bill 1268, **The Personnel System Reform Act**. This legislation has three main parts: civil service system restructuring, collective bargaining, and competitive contracting. Prior to the **competitive contracting** provisions of this law going into effect on July 1, 2005, state agencies and higher education institutions generally could not contract out for services customarily and historically provided by classified state employees.

State agencies and institutions of higher education may now contract for services customarily and historically provided by classified state employees if they meet the following criteria:

- The invitation for bid or request for proposals contains measurable performance standards;
- Classified employees whose positions or work would be displaced by the contract have the opportunity to offer alternatives to contracting and, if their alternative is rejected, to compete for the contract;
- The agency has a contract monitoring process and termination procedures; and
- The agency has determined the contract will result in savings or efficiency improvements, and the agency has considered the risk of failed performance.

In addition to meeting the above criteria, agencies must also follow a statutorily prescribed process for competitive contracting, which is described in detail in Chapter 2.

STUDY MANDATE AND OBJECTIVES

As part of The Personnel System Reform Act, the Legislature directed the Joint Legislative Audit and Review Committee (JLARC) to conduct a performance audit of the implementation of competitive contracting, by January 1, 2007. This performance audit focuses on three main questions: (1) Are the statutory **processes** and requirements for competitive contracting in place? (2) What are **agency experiences** with competitive contracting? (3) Do **other states and the federal government** provide employees the opportunity to offer alternatives or submit bids when contracting for services?

A Note on Terminology

“Competitive contracting” is a term that can have many meanings. In this report, the term means a process for agencies to contract work historically and customarily done by classified staff, and providing these staff the opportunity to offer alternatives to contracting and to bid on the contract.

Competitive contracting is not the only type of contracting the state does. In Fiscal Year 2006, the state spent \$7.4 billion for contracting for services, or 32 percent of total state operating expenditures. These contracts may have been “competitive” in that private entities bid against each other for the contract, but they may not be “competitive contracts” as defined for this report unless state employees had historically and customarily done the work and had the opportunity to offer alternatives or submit a bid.

“Classified staff” are the state employees who are subject to Civil Service laws. Generally, this is all employees except higher-level managers, and employees in the legislative and judicial branches of state government.¹

Report Organization

Chapter 2 describes the competitive contracting processes, and reviews whether the processes required by statute are in place.

Chapter 3 describes the competitive contracting experiences of state agencies, universities, and community colleges, and the reasons agency managers provide for not pursuing competitive contracting.

Chapter 4 reviews how other states and the federal government contract for services.

Chapter 5 concludes the report with a report summary.

¹ Chapter 41.06 RCW.

CHAPTER TWO: COMPETITIVE CONTRACTING PROCESS

CHAPTER OVERVIEW

The Personnel System Reform Act of 2002 (Revised Code of Washington 41.06.142), lays out specific criteria and the process that agencies and higher education institutions must use to competitively contract. As part of this JLARC study, we reviewed whether these processes were in place. JLARC found that the Departments of General Administration and Personnel have developed rules in Washington Administrative Code and guidance documents to help agencies and higher education institutions fulfill these requirements. Also, the Office of Administrative Hearings has developed a protocol for handling competitive contracting appeals.

COMPETITIVE CONTRACTING PROCESS

Statute establishes the requirements for the competitive contracting process, as illustrated in **Figure 1** on the following page. (See **Appendix 3** for the full text of the statute, RCW 41.06.142.) JLARC staff reviewed whether the statutory requirements for competitive contracting are in place. Because so few agencies have competitively contracted, we reviewed the statewide rules in Washington Administrative Code and guidance developed to ensure that agencies follow the statute, rather than looking at whether agencies met each requirement in individual instances of competitive contracting.

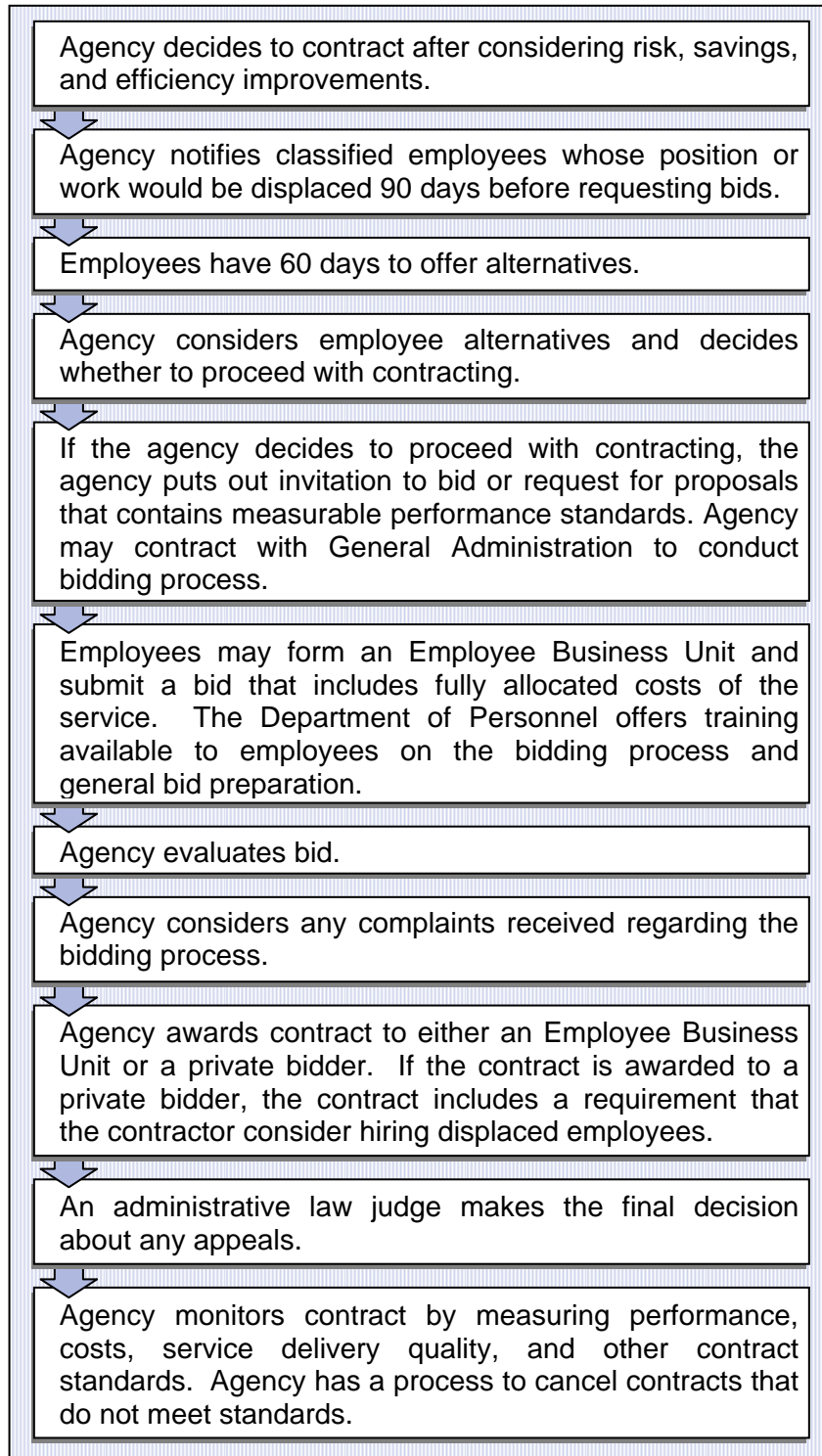
The Departments of General Administration and Personnel developed more detailed information and specific procedures for this process through rule and guidance documents:

- As directed by RCW 41.06.124, the Department of General Administration adopted competitive contracting rules, which focus on the bidding, complaint, award, and appeal processes.²
- Additionally, the Department of General Administration wrote a Competitive Contracting Manual with more detailed guidance about how to proceed through the competitive contracting process. This 135-page document includes guidance on issues such as identifying possible services for competitive contracting, determining the cost of services, risk assessment, the alternatives phase, bid solicitation, and contract management.
- The Department of Personnel adopted rules that apply to employees whose Employee Business Unit wins a competitive contract.³
- As directed by RCW 41.06.142, the Department of Personnel created an online training document for employees on forming an Employee Business Unit and bidding.

² Chapter 236-51 Washington Administrative Code (WAC).

³ Chapter 357-43 WAC.

Figure 1 – Statutory Requirements for Competitive Contracting Process



Source: JLARC analysis of RCW 41.06.142.

ARE THE PROCESSES REQUIRED BY STATUTE IN PLACE?

As part of our study objectives, we focused on seven questions about whether the statutory requirements for competitive contracting were in place. We reviewed whether the Department of General Administration's and the Department of Personnel's rules and guidance addressed these specific statutory requirements for competitive contracting.⁴ In summary, **the processes required by statute are in place.** Following are the answers to the seven process questions.

1. **How are measurable standards for contract performance established?** The Department of General Administration's Competitive Contracting Manual provides guidance on defining results and outcomes.
2. **Are employees to be displaced by contracts provided the opportunity to offer alternatives to contracting? Are they provided an opportunity to compete for contracts?** Chapter 236-51 WAC and the Department of General Administration's Competitive Contracting Manual provide guidance on the alternatives and bidding phases of competitive contracting.
3. **Is training on establishing Employee Business Units available for employees?** The Department of Personnel has developed an online training document, but not in-person training.
4. **Do contract provisions require entities to consider employing state employees displaced by a contract?** This requirement is reiterated in Chapter 236-51 WAC.
5. **Have processes been put in place to monitor contract performance, cost, service delivery quality, and to cancel contracts not meeting standards?** The Department of General Administration's Competitive Contracting Manual includes a section on contract management and monitoring that addresses these statutory requirements.
6. **Have the contracting agencies determined that the contract will result in savings and efficiency improvements, and have they considered the consequences of failed contract performance?** The Department of General Administration's Competitive Contracting Manual provides guidance on calculating costs and includes spreadsheets that agencies can use to compare private bidder costs with bids from Employee Business Units.
7. **What procedures are in place to allow for appeals of agency decisions?** Chapter 236-51 WAC defines the appeals process, including who has appeal rights, what can be appealed, and when an appeal must be made. Also, the Office of Administrative Hearings has developed a protocol for handling competitive contracting appeals.

⁴ RCW 41.06.142.

CHAPTER THREE: AGENCY EXPERIENCES WITH COMPETITIVE CONTRACTING

CHAPTER OVERVIEW

The competitive contracting statute does not assign any agency with the responsibility to track competitive contracting. JLARC staff surveyed and interviewed agency managers: three agencies told us they have contracted for services using provisions of the Personnel System Reform Act. In interviews, managers gave two main reasons for not pursuing competitive contracting. First, agency managers perceive the process to be complicated and confusing, introducing a disincentive to competitively contract. Additionally, competitive contracting is a subject of collective bargaining, which can create additional challenges for managers.

NO AGENCY TRACKS THE STATE'S COMPETITIVE CONTRACTING

Although the Legislature gave roles to several agencies for implementing competitive contracting, the Legislature did not assign any agency the responsibility to track competitive contracting across state agencies and higher education institutions. As such, no agency has a record of all instances of competitive contracting.

To answer the question of how much competitive contracting has occurred, JLARC staff surveyed and interviewed agency managers about their use of competitive contracting. These agencies represent 93 percent of the \$7.4 billion the state spent on contracting for services in Fiscal Year 2006. The list of these agencies is provided in **Appendix 5** of this report.

FEW AGENCIES HAVE COMPETITIVELY CONTRACTED

Three agencies told JLARC they have contracted for services using the provisions of the Personnel System Reform Act since it was authorized in July 2005. These instances occurred at Yakima Valley Community College, Washington State Patrol, and Central Washington University. In all three instances, the agency decided to contract work. Yakima Valley Community College has the only contract that displaced employees. This section also describes Centralia College's consideration of an opportunity to competitively contract, which they ultimately decided not to competitively contract.

Yakima Valley Community College

Yakima Valley Community College decided to competitively contract the operation of their child care center upon determining the center had been costing approximately \$100,000 a year more than revenues. Prior to this, the College had already reduced staffing levels from nine FTEs to four, which meant that fewer children could be served. The College wanted the child care center to operate at full capacity.

Staff from the Department of General Administration helped the College understand the competitive contracting process. The employee's union, the Washington Public Employees Association, offered an alternative to contracting which the College rejected, but the employees

decided not to form an Employee Business Unit and bid on the contract. Ultimately, the College selected a private bidder, which began operating the child care center this fall. The contractor has hired one of the four displaced employees.

Washington State Patrol

The State Patrol received funding from the U.S. Department of Justice for a telecommunications infrastructure improvement project. State employees currently perform this type of work, but the State Patrol believed it did not have enough employees to do this additional work. The State Patrol needed to either hire additional staff or contract. The State Patrol used the cost comparison spreadsheets that are part of the Department of General Administration's Competitive Contracting Manual to compare the cost of hiring additional employees and doing the work in-house to the cost of a private vendor doing the work. According to the State Patrol, the contract did not displace state employees so the State Patrol did not provide an opportunity for employees to offer alternatives or to submit bids. The State Patrol contracted with General Administration to conduct the bidding process and contracted with a vendor for the telecommunications project.

Central Washington University

Central Washington University's collective bargaining agreement states that the University can competitively contract as long as they do not lay off employees or reduce work schedules. The University has used the competitive contracting provisions for five catering events and one fencing project. Four of the catering jobs were contracted out. One catering job and the fencing project were done by University staff.

Centralia College

Centralia College took several steps toward contracting their food service before deciding not to do so. The College's food service has two classified employees and has been operating at an estimated financial loss of at least \$7,000 a year. The College considered competitive contracting after several years of unsuccessfully working to make the food service breakeven. Centralia College began the process by meeting with the food service employee's union, the Washington Federation of State Employees. The union and the employees did not offer any alternatives to contracting. Instead of issuing a formal bid solicitation, Centralia College issued a Request for Information to learn more about the market and possible bidders. After receiving three vendor responses, of which only one was considered viable, the College decided against contracting.

Summary of Competitive Contracting Experiences

In three out of the four instances we reviewed, the agency awarded a contract to private vendors. Only one of these agencies displaced any employees. The other two agencies used competitive contracting processes for small projects or for a large project that added to the agency's workload. A fourth agency considered competitively contracting a service which would have displaced employees, but ultimately decided against it, in part because of a limited number of potential qualified vendors.

CHALLENGES TO COMPETITIVE CONTRACTING

Since so few agencies have competitively contracted, JLARC staff interviewed managers from 23 state agencies and higher education institutions about why they have not competitively contracted. We heard two main themes in these interviews. First, **managers view the process as complex and confusing**, creating a disincentive to competitively contract. Second, since competitive contracting is a **subject of bargaining**, it creates new and additional challenges beyond complexities in the contracting process itself.

Manager's Perceptions of Complexity

As JLARC staff talked to managers about competitive contracting, a number of themes emerged. First, managers view the **overall process** as too complex. Some managers said that doing the required up-front analysis and going through the competitive contracting steps would require additional time, effort, and resources. Managers feel that the complexity of the process is a disincentive to competitive contracting.

Second, the concept of **Employee Business Units** is new and untested to managers. Several managers said they had many unanswered questions about how to work with Employee Business Units in their bid development and also how they would manage Employee Business Units. One manager summarized this by saying that her agency knows how to contract, but not how to work with Employee Business Units.

In addition, managers expressed confusion over what contracts might have to go through the competitive contracting process. Many managers said they wanted to see how others' experiences worked so they could learn from others' successes and failures.

Labor Relations and Collective Bargaining

Another common theme we heard from agency managers in explaining why they are not competitively contracting is that labor relations can be complicated. Managers expressed caution that competitive contracting might lead to a conflict with their employees and the unions. Several said they were concerned the union would "sue" them. Others also mentioned concerns about disrupting the agency workforce.

The Personnel System Reform Act is frequently referred to as a three-legged stool: civil service system restructuring, collective bargaining, and competitive contracting. The Act specifically allows bargaining that affects competitive contracting. Section 303 of the Act describes what is subject to collective bargaining. It states: "This section does not prohibit bargaining that affects contracts authorized by section 208 of this act."⁵ Section 208 contains the competitive contracting language. Thus, although competitive contracting and collective bargaining are frequently referred to as being two separate legs, these two legs are intertwined because of their impacts on each other.

Bargaining about contracting can occur in two ways. First, employers and unions may bargain broad contracting issues as part of their collective bargaining agreement. For example, the parties can include language in the collective bargaining agreement saying that the employer may *not* competitively contract. Second, if an employer decides to contract, then the employer and union must bargain related to that specific contract.

⁵ Codified in RCW 41.80.020. See Appendix 4 for the text of this statute.

Collective Bargaining Agreements

Collective bargaining agreements may allow contracting, partially prohibit contracting, prohibit contracting, or not mention contracting at all. **Table 1** on the following pages outlines how the 2005-2007 agreements and the pending 2007-2009 agreements approach competitive contracting. The table illustrates three key points: 1) The agreements vary in how they approach competitive contracting: from not mentioning the subject to a moratorium; 2) Language can change between bargaining periods; and 3) Different agencies and universities may have different approaches: there is no one statewide approach.

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Table 1 - Summary of Collective Bargaining Agreement References to Competitive Contracting

AGREEMENT	2005-2007 AGREEMENT	2007-2009 PENDING AGREEMENT
<i>Agreements Negotiated by Office of Financial Management's Office of Labor Relations</i>		
Coalition*	No reference to competitive contracting	No reference to competitive contracting
Service Employees International 1199	No reference to competitive contracting	No reference to competitive contracting
Washington Public Employees Association: General Government	No reference to competitive contracting	No reference to competitive contracting
Washington Public Employees Association: Higher Education	No reference to competitive contracting	No reference to competitive contracting
Washington Federation of State Employees: General Government	No reference to competitive contracting	Employer will determine which services will be subject to competitive contracting. Agreement specifies this does not constitute a waiver of the Union's right to negotiate a mandatory subject.
Washington Federation of State Employees: Higher Education	No reference to competitive contracting	Employer will determine which services will be subject to competitive contracting. Agreement specifies this does not constitute a waiver of the Union's right to negotiate a mandatory subject.
International Federation of Professional and Technical Engineers Local 17	No reference to competitive contracting	No reference to competitive contracting
Teamsters	No reference to competitive contracting	No reference to competitive contracting
United Food and Commercial Workers	No reference to competitive contracting	No reference to competitive contracting
<i>Agreements Negotiated By Specific Organizations</i>		
Washington Federation of State Employees: Western Washington University	University may contract for services historically performed by employees.	University may contract for services as permitted by RCW 41.06.142. For services customarily and historically performed by University employees and not contracted prior to July 1, 2007, University agrees that it will not contract for such services during the contract period.
Public School Employees: Western Washington University	No reference to competitive contracting	University may contract for services as permitted by RCW 41.06.142. No member of bargaining unit will be laid off as a result of contracting for services unless the duties of a position fall below 0.5 FTE.
Washington Federation of State Employees: Central Washington University	The University will determine which services will be subject to competitive contracting. No bargaining unit employee will be laid off as a result of competitive contracting through June 30, 2007.	The University will determine which services will be subject to competitive contracting. No bargaining unit employee will be laid off as a result of competitive contracting through June 30, 2007.

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AGREEMENT	2005-2007 AGREEMENT	2007-2009 PENDING AGREEMENT
<i>Agreements Negotiated By Specific Organizations - Continued</i>		
Washington Federation of State Employees: Eastern Washington University	University may contract for services customarily and historically performed by employees as permitted by RCW 41.06.142. For services not contracted prior to July 1, 2005, University agrees it will not contract for such services prior to July 1, 2007.	University may contract for services customarily and historically performed by employees as permitted by RCW 41.06.142. University agrees that it will not contract for services under the provisions of RCW 41.06.142 prior to July 1, 2009.
Washington Federation of State Employees: Washington State University	Through a side letter of agreement, University agrees to not engage in competitive contracting under the provisions of RCW 41.06.142. Moratorium in effect from July 1, 2005, to June 30, 2007.	No reference to competitive contracting
Washington Federation of State Employees: University of Washington--Master	University will not contract out work which results in layoff except as agreed to by way of a collaborative process and quality improvement teams. This process and teams will be used rather than implementing the provisions of the Personnel System Reform Act.	University will follow competitive contracting statute if contracting results in layoff. Employer will not contract out work for the purpose of avoiding overtime or eroding the bargaining unit. The employer may contract for other work that does not result in a layoff.
Washington Federation of State Employees: University of Washington--Police Management	University will not contract out work which results in the layoff of bargaining unit employees who are employed prior to the time of the execution or renewal of the agreement. Rather than implementing the provisions of the Personnel System Reform Act parties agree to engage in collaborative process and quality improvement teams.	University will not contract out work which results in the layoff of bargaining unit employees who are employed prior to the time of the execution or renewal of the agreement. Rather than implementing the provisions of the Personnel System Reform Act, parties agree to engage in collaborative process and quality improvement teams.
Service Employees International Union 925: University of Washington	University will not contract out work which results in the layoff of bargaining unit employees who are employed prior to the time of the execution or renewal of the agreement.	University will not contract out work which results in the layoff of bargaining unit employees who are employed prior to the time of the execution or renewal of the agreement.
University of Washington Police Officers Association: University of Washington	University will not contract out work which results in the layoff of bargaining unit employees who are employed prior to the time of the execution or renewal of the agreement.	University will not contract out work which results in the layoff of bargaining unit employees who are employed prior to the time of the execution or renewal of the agreement.
Service Employees International Union 1199: University of Washington--Master	University will not contract out work which results in the layoff of bargaining unit employees who are employed prior to the time of the execution or renewal of the agreement.	University will not contract out work which results in the layoff of bargaining unit employees who are employed prior to the time of the execution or renewal of the agreement.
Washington Public Employees Association: Yakima Valley Community College	College has right to subcontract within rules of RCW 41.06. College will notify Union that an assessment of potential competitive contracting will or has occurred and provide 90 days notice during which time Union may propose alternatives to contracting.	College has right to subcontract within rules of RCW 41.06. College will notify Union that an assessment of potential competitive contracting will or has occurred and provide 90 days notice during which time Union may propose alternatives to contracting.

**The Coalition agreement covers: Masters, Mates & Pilots Marine Department; Washington Association of Professional Biologist; Teamster 760; IBEW; UA 32; Washington State Patrol Communication Managers; Washington State Patrol Trades Association; Washington State Nurses Association.*

Source: JLARC analysis of individual agreements and summaries provided by agencies and institutions.

Bargaining Specific Contracts

Since contracting is a subject of bargaining, agencies are required to bargain the **impacts** of any contracting decision on bargaining unit members. For instance, if an agency contracted out work that did not displace employees, but awarded contracts for the highest skilled work performed by a class of employees, then the *impact* of this contract on employees would be lower job classifications and lower salaries.

There is some confusion among state managers about whether agencies must also bargain the **decision to contract**. This issue is likely to be resolved by the Public Employment Relations Commission (PERC) as it decides on Unfair Labor Practices filed against state agencies when a union asserts that an agency did not fulfill its duty to bargain.

Regardless of *what* an agency or higher education institution must bargain, the requirements about how to bargain are the same. According to past decisions by PERC about bargaining, an employer fulfills its duty to bargain when it:

1. Provides notice to the union;
2. Provides an opportunity to bargain before making a final decision on the proposed change; and
3. Upon timely request, bargains in good faith to agreement or impasse.⁶

The duty to bargain **does not** mean that the union and employer must agree on the final decision.

The requirement to bargain about contracting adds complexities to the competitive contracting process beyond what is in the competitive contracting statute and rule. Neither statute nor rule provide specific guidance on the requirement to bargain and at what stage in the process an employer must bargain. The Department of General Administration's Competitive Contracting Manual includes a process flow chart that describes when agencies should contact their bargaining units, but the Manual does not provide guidance on how or what to bargain. However, the Office of Financial Management's Labor Relations Office has developed a guidance document with advice on bargaining issues related to contracting. This document is in **Appendix 6**.

⁶ *University of Washington*, PERC Decision 9410 (2006).

CHAPTER FOUR: CONTRACTING FOR SERVICES IN OTHER STATES AND THE FEDERAL GOVERNMENT – EMPLOYEE BIDDING

JLARC staff researched how other states and the federal government contract, with a focus on whether and how they allow employees to offer alternatives or submit bids similar to Washington’s process. Rather than reviewing all states, JLARC staff reviewed literature on contracting and then further researched states known to provide employees an opportunity to bid or known for pursuing substantial efforts to contract out. **Figure 2** below shows whether these selected governments allow employees to bid or offer alternatives, an estimate of how often that occurs, and the activities where employees have bid or offered alternatives.

Figure 2 – Employee Bidding in Other States and the Federal Government

Government	Allows employees to bid?	Number and type of activities for which employees have bid or offered alternatives.
Federal Government	Yes. If an agency decides to contract an activity with over 65 federal employees, the agency is required to organize into a Most Efficient Organization which submits a bid that is compared to private bids.	250 during Fiscal Years 2003-05. Types of activities include: maintenance and property management, information technology, logistics, human resources, personnel management, and financing and accounting services.
Massachusetts	Yes. Employees may work with their unions to submit concessions, such as reduced staffing levels, that are incorporated into the in-house cost estimate. The Office of the State Auditor evaluates all proposals.	Eight times since 1993. Types of activities include: university bookstore management, operation and maintenance of bus routes, food service, bus shelter maintenance, and highway maintenance.
Indiana	Sometimes. Employees can bid when permitted by the agency director.	Twice since 2004. State hospital food service and corrections officers.
Virginia	Sometimes. Employees can bid when permitted by the agency director.	None.
Florida	No process in place. However agencies wishing to contract must present in their business case an internal option for employees to continue performing the work to be compared against private bids.	Once in 2003. Department of Children and Families eligibility determination activities.
Texas	No process in place. However, nothing prohibits employees from bidding.	None.

Source: JLARC.

The analysis focused on the policies and experiences of five states regarding employee bidding opportunities and found **no one common approach**. Massachusetts and the federal government have similar concepts to Employee Business Units, which allow employees to offer alternatives or bids, but each varies from Washington. In Massachusetts, employees work with their unions to submit bids or to offer concessions, such as reduced staffing levels. The federal government has a formal process for organizing employee teams, or Most Efficient Organizations, which propose options for making the service more efficient. The agency then decides between the Most Efficient Organization and a private bidder.

Other states have less formalized ways of allowing employees to offer alternatives or submitting bids. Some states, such as Florida, require agencies to consider a management-prepared option of employees continuing the work. Finally, other states, like Virginia, have not defined a process and largely leave the decision regarding employee bidding up to the agency. Regardless, the contracting approaches in these governments are **frequently changing** and reacting to a variety of circumstances.

CHAPTER FIVE: CONCLUSION

In summary, JLARC staff found three instances of agencies utilizing the competitive contracting provisions of the Personnel System Reform Act in the 16 months since its authorization in July 2005. The Departments of General Administration and Personnel have developed rules and guidance documents to ensure that the statutorily required competitive contracting requirements are in place when agencies do decide to competitively contract.

JLARC staff interviewed managers from 23 state agencies and institutions of higher education and found two main reasons for the limited amount of competitive contracting to date.

- Managers perceive the process as defined in statute, rule, and the Department of General Administration's Competitive Contracting Manual to be complicated and confusing, providing a disincentive to competitively contract.
- Competitive contracting is a subject of collective bargaining. As a result, competitive contracting is intertwined with the complexities of collective bargaining and labor relations. This requirement to bargain contracts creates additional challenges for managers beyond the complexities of the competitive contracting process as defined by statute, rule, and General Administration's Manual. Additionally, language on competitive contracting may be included in collective bargaining agreements. Some higher education institutions have language in their collective bargaining agreements that either limit or prohibit their use of competitive contracting.

Because of such complexities, several managers said they wanted to wait and see how others' experiences worked so they could learn from others' successes and failures before pursuing competitive contracting.

To see how Washington's experiences compare to those of other states and the federal government, we did a review of selected other states and the federal government. We found states have a range of policies and experiences regarding employee bidding opportunities and no one common approach. The contracting approaches in these governments are frequently changing and reacting to a variety of circumstances. We did *not* find other states with Employee Business Units, but some have similar concepts that allow employees and unions to offer alternatives or bids. Even in those states that do allow employees to offer alternatives or submit bids, this has not frequently occurred.

AGENCY RESPONSES

We have shared the report with the Department of Personnel (DOP), the Public Employment Relations Commission (PERC), the Office of Financial Management (OFM), and the Department of General Administration (GA), and provided them an opportunity to submit written comments. Their written responses are included as Appendix 2.

ACKNOWLEDGEMENTS

We appreciate the assistance provided by the staff of the Department of Personnel, the Public Employment Relations Commission, the Office of Financial Management, and the Department of General Administration in conducting this study.

Ruta Fanning
Legislative Auditor

On January 4, 2007, this report was approved for distribution by the Joint Legislative Audit and Review Committee.

Representative Ross Hunter
Chair

APPENDIX 1: SCOPE AND OBJECTIVES

PERFORMANCE AUDIT OF THE IMPLEMENTATION OF COMPETITIVE CONTRACTING

SCOPE AND OBJECTIVES

AUGUST 2006



STATE OF WASHINGTON
JOINT LEGISLATIVE AUDIT AND
REVIEW COMMITTEE

STUDY TEAM

LISA JEREMIAH
JOHN WOOLLEY

LEGISLATIVE AUDITOR

RUTA FANNING

Joint Legislative Audit & Review
Committee
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Why a Performance Audit of the Implementation of Competitive Contracting?

The Legislature passed Substitute House Bill 1268, *The Personnel System Reform Act* in the 2002 Legislative Session (Chapter 354, Laws 2002). The Act has three principal components: civil service system restructuring, collective bargaining, and **competitive contracting**. The Act also directs the Joint Legislative Audit and Review Committee (JLARC) to conduct a performance audit of the implementation of **competitive contracting** by January 1, 2007.

BACKGROUND

In a 1978 decision, the Washington State Supreme Court determined that agencies and institutions of higher education were not to contract out for services regularly and historically provided by classified state employees.

The Legislature responded the following year by clarifying that these organizations could purchase services by contract if the services were regularly purchased by contract prior to 1979. However, a contract could not be executed or renewed if it would have the effect of terminating classified state employees.

The Personnel System Reform Act of 2002 eliminated this prohibition. Effective July 1, 2005, state agencies and institutions of higher education may contract out for services historically provided by state employees if they meet established criteria and if the agency follows a certain process.

The language of the Act formally defines this process and its criteria as “competitive contracting,” defining it as *the process by which classified employees of a department, agency, or institution of higher education compete with businesses, individuals, nonprofit organizations, or other entities for contracts*.

Key aspects of the competitive contracting process include:

- ✓ The identification of types of services that may be competitively contracted.
- ✓ The ability of current state employees to compete with private-sector firms offering to provide contracted services. Employees can compete by forming employee groups, called “employee business units.”
- ✓ Performance monitoring for competitive contracts.

The Act directs the Director of the Department of Personnel to develop training in the bidding process and bid preparation for employee business units.

The Act also directs the Director of the Department of General Administration to establish rules and procedures to ensure that bids for any contracts are submitted and evaluated in a fair and objective manner and that a competitive market exists for the services.

STUDY SCOPE

This performance audit will analyze the implementation of competitive contracting, including the adequacy of the appeals process.

OBJECTIVES AND QUESTIONS TO BE ADDRESSED BY THE ANALYSIS

The performance audit will focus on the Department of General Administration's, the Department of Personnel's, and the Office of Administrative Hearing's development of the training, rules, and procedures necessary to implement the provisions of the Act related to competitive contracting.

The audit will review the **processes** established to implement these provisions. Questions to be answered include:

1. How are measurable standards for contract performance established?
2. Are employees to be displaced by contracts provided the opportunity to offer alternatives to contracting? Are they provided an opportunity to compete for contracts?
3. Is training on establishing employee business units available for employees?
4. Do contract provisions require entities to consider employing state employees displaced by the contract?
5. Have processes been put in place to monitor contract performance, cost, service delivery quality, and to cancel contracts not meeting standards?
6. Have the contracting agencies determined that the contract will result in savings and efficiency improvements, and have they considered the consequences of failed contract performance?
7. What procedures are in place to allow for appeals of agency decisions?

Contracts in place at agencies, and agency experiences with implementing competitive contracting, will be analyzed. The audit will review how other states and the federal government have introduced contracting for services.

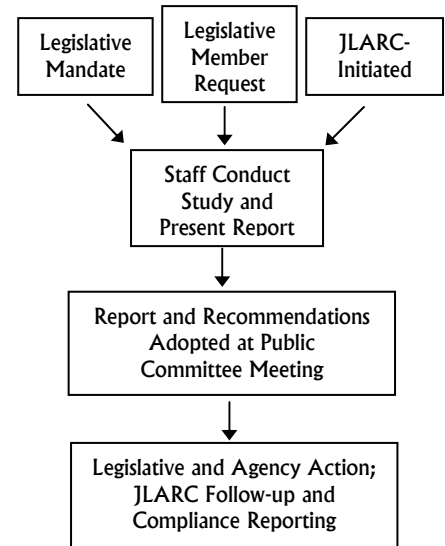
TIMEFRAME FOR THE STUDY

A preliminary audit report will be presented at the November 2006 JLARC meeting, and a final report will be presented in January 2007.

JLARC STAFF CONTACT FOR THE STUDY

Lisa Jeremiah	(360) 786-5293	jeremiah.lisa@leg.wa.gov
John Woolley	(360) 786-5184	woolley.john@leg.wa.gov

JLARC Study Process



Criteria for Establishing JLARC Work Program Priorities

- Is study consistent with JLARC mission? Is it mandated?
- Is this an area of significant fiscal or program impact, a major policy issue facing the state, or otherwise of compelling public interest?
- Will there likely be substantive findings and recommendations?
- Is this the best use of JLARC resources: For example:
 - Is the JLARC the most appropriate agency to perform the work?
 - Would the study be nonduplicating?
 - Would this study be cost-effective compared to other projects (e.g., larger, more substantive studies take longer and cost more, but might also yield more useful results)?
- Is funding available to carry out the project?

APPENDIX 2: AGENCY RESPONSES

- Department of Personnel
- Public Employment Relations Commission
- Department of General Administration
- Office of Financial Management



STATE OF WASHINGTON

DEPARTMENT OF PERSONNEL

521 Capitol Way South, P.O. Box 47500 • Olympia, WA 98504-7500 • (360) 664-1960 • FAX (360) 586-4694

December 1, 2006

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JLARC

TO: Ruta Fanning, Legislative Auditor
Joint Legislative Audit and Review Committee

FROM: Eva Santos, Director
Department of Personnel

SUBJECT: PERFORMANCE AUDIT AND IMPLEMENTATION OF COMPETITIVE CONTRACTING - PRELIMINARY REPORT

The Department of Personnel (Department) submits its formal response to the Performance Audit of the Implementation of Competitive Contracting Preliminary Report. The Department will only address competitive contracting as it is used in the Preliminary Report.

The Department of Personnel has a limited role with respect to the administration of competitive contracting. RCW 41.06.142 requires the Department to develop and provide training to employee business units. Additionally, as the agency responsible for civil service rules, the Department has a role in developing any necessary rules regarding employees in an employee business unit.

The Personnel System Reform Act of 2002 directs the Department of Personnel “with the advice and assistance of the department of general administration” to develop training for employee business units in the bidding process and general bid preparation. The Department has created training for employees on forming an employee business unit and the bidding process. As the Preliminary Report indicates, the Department has developed an on-line training. While the Department has not developed live instructor led training, it plans to do so if requested. To date there have been no such requests.

The Department also developed rules to apply to non-represented employees who are part of an employee business unit. (WAC 357-43) The Washington Federation of State Employees (WFSE) filed a formal petition under the Administrative Procedures Act requesting that the Department rescind its rules on employees in an employee business unit. After review of the concerns voiced by the WFSE, the Department has decided to revise and rescind some of its rules in WAC 357-43. The purpose in doing so will be to streamline the rules, remove superfluous rules, and clarify the application of the rules—particularly with respect to EBU



Memo to Ruta Fanning

Page 2

December 1, 2006

employees who are covered by the terms of a collective bargaining agreement. The Department is working with stakeholders on the proposed changes and is currently scheduled to bring the final proposed revisions to the March 7, 2007 directors' meeting. The current rules remain in effect until the rulemaking process is completed.

The Department of Personnel has no further response to the Preliminary Report. Thank you for the opportunity to respond. If you have any questions, please do not hesitate to contact me.



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DEC - 7 2006

JLARC

STATE OF WASHINGTON
PUBLIC EMPLOYMENT RELATIONS COMMISSION

CATHLEEN CALLAHAN, Executive Director

112 Henry Street NE, Suite 300 • Post Office Box 40919 • Olympia Washington 98504-0919
(360)570-7300 • Fax (360)570-7334 • E-mail filings: filing@perc.wa.gov • Website: www.perc.wa.gov

December 6, 2006

Ruta Fanning, Legislative Auditor
Joint Legislative Audit and Review Committee
PO Box 40910
Olympia, Washington 98504-0910

Dear Ms. Fanning:

This letter is in response to your request for a response to the preliminary report on Competitive Contracting.

First, the Public Employment Relations Commission (PERC) has not been involved in the development or implementation of policy related to competitive contracting.

Second, PERC's involvement with respect to this issue would only arise should a case come before the Commission alleging that one of the parties failed to meet its bargaining obligations. As an example, because the issue of contracting out work performed by represented employees is a mandatory subject of bargaining, an employer would be required to notify the union and provide it a meaningful opportunity to bargain prior to contracting such work. Should such a case be filed with the Commission, the merits would be determined based upon the facts and extant case law.

I trust this is responsive to your request and I thank you for the opportunity to comment.

Very truly yours,

PUBLIC EMPLOYMENT RELATIONS COMMISSION

CATHLEEN CALLAHAN, Executive Director

CAC:mcb





STATE OF WASHINGTON
DEPARTMENT OF GENERAL ADMINISTRATION
200 General Administration Building, P.O. Box 41000 • Olympia, Washington 98504-1000
(360) 902-7300 • TDD (360) 664-3799

December 13, 2006

TO: Ruta Fanning, Legislative Auditor

FROM: Linda Villegas Bremer, Director *Linda Villegas Bremer*

SUBJECT: Performance Audit of the Implementation of Competitive Contracting

Thank you for the opportunity to comment on the Preliminary Report of the Performance Audit of the Implementation of Competitive Contracting. An important component of the Personnel System Reform Act of 2002 (PSRA) is the authority to competitively contract for services traditionally performed by state employees.

We appreciated working with your team, led by John Woolley, in providing information on the comprehensive steps our agency took to fulfill our rulemaking obligations under the PSRA.

The PSRA balanced many complex and competing interests in crafting major reforms to our state's personnel systems. The PSRA set forth extensive requirements for conducting a fair and objective competitive contracting bid process, including multiple methods of appeal. Consistent with that complexity, developing the rules for the competitive contracting bid process involved working with over 900 stakeholders for nearly two years.

Both the PSRA and our rules recognize that competitive contracting is an important tool for improving agency performance. However, the PSRA and our rules also recognize that a decision to contract out is reached only after thorough consideration of other alternatives to improve service delivery. While many of these efforts may not lead specifically to contracting out, we believe that state agencies are achieving valuable performance improvements along the way.

Again, thank you for the opportunity to comment. GA is ready to assist agencies in understanding and conducting their responsibilities under the competitive contracting bid process. We look forward to the final report.





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DEC 11 2006

JLARC

STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT

Insurance Building, PO Box 43113 • Olympia, Washington 98504-3113 • (360) 902-0555

December 5, 2006

TO: Ruta Fanning, Legislative Auditor
Joint Legislative Audit and Review Committee

FROM: Victor A. Moore, Director 

**SUBJECT: PRELIMINARY REPORT – PERFORMANCE AUDIT OF THE
IMPLEMENTATION OF COMPETITIVE CONTRACTING**

Thank you for the opportunity to review and comment on the Joint Legislative Audit and Review Committee's preliminary report on "Performance Audit of the Implementation of Competitive Contracting." While this report does not make recommendations, I would like to offer a couple of clarifications.

In several places, the report refers to the fact that competitive contracting is a subject of collective bargaining. More specifically, the report points out that collective bargaining agreements can permit, prohibit, or place limitations on an entity's authority to engage in competitive contracting. The report indicates that there appears to be no statewide approach because current and pending agreements have provisions in each of these categories. We think this statement may be a bit strong.

Table 1 in the report displays all the contracts negotiated by the Office of Financial Management's (OFM) Labor Relations Office (LRO) both for 2005-07 and those pending for the next biennium. In none of these cases are there provisions that restrict or prohibit the state's ability to engage in competitive contracting. In fact, for all agencies covered by agreements negotiated by LRO, there is one consistent approach – to neither prohibit nor limit agencies' ability to competitively contract. The agreements that do limit competitive contracting are those negotiated by higher education institutions, over which OFM-LRO has no control.

As you note in the "Bargaining Specific Contracts" section, when an agency must notify the union and when an agency must bargain with the union are issues in dispute. While we agree that the state must bargain the impacts of any competitive contract, there is disagreement as to whether or not the state must bargain the decision to competitively contract. This issue will eventually be decided by the Public Employment Relations Commission or the courts. This is important because uncertainty has played a material role in agency decisions as to whether and when to engage in competitive contracting.

Thank you again for the opportunity to comment on the report. If you have any questions, please contact Steve McLain at (360) 725-5152.



APPENDIX 3: STATUTE AUTHORIZING COMPETITIVE CONTRACTING

RCW 41.06.142

Purchasing services by contract — Effect on employees in the classified service — Criteria to be met — Bidding — Definitions.

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

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

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

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

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

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

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

(3) Contracting for services that is expressly mandated by the legislature or was authorized by law prior to July 1, 2005, including contracts and agreements between public entities, shall not be subject to the processes set forth in subsections (1) and (4) through (6) of this section.

(4) Competitive contracting shall be implemented as follows:

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

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

Performance Audit of the Implementation of Competitive Contracting

(c) The director of personnel, with the advice and assistance of the department of general administration, shall develop and make available to employee business units training in the bidding process and general bid preparation.

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

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

(f) A department, agency, or institution of higher education may contract with the department of general administration to conduct the bidding process.

(5) As used in this section:

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

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

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

(6) The joint legislative audit and review committee shall conduct a performance audit of the implementation of this section, including the adequacy of the appeals process in subsection (4)(d) of this section, and report to the legislature by January 1, 2007, on the results of the audit.

[2002 c 354 § 208.]

Notes:

Short title -- Headings, captions not law -- Severability -- Effective dates -- 2002 c 354: See RCW 41.80.907 through 41.80.910.

APPENDIX 4: STATUTE ON SCOPE OF COLLECTIVE BARGAINING

RCW 41.80.020

Scope of bargaining.

(1) Except as otherwise provided in this chapter, the matters subject to bargaining include wages, hours, and other terms and conditions of employment, and the negotiation of any question arising under a collective bargaining agreement.

(2) The employer is not required to bargain over matters pertaining to:

(a) Health care benefits or other employee insurance benefits, except as required in subsection (3) of this section;

(b) Any retirement system or retirement benefit; or

(c) Rules of the director of personnel or the Washington personnel resources board adopted under section 203, chapter 354, Laws of 2002.

(3) Matters subject to bargaining include the number of names to be certified for vacancies, promotional preferences, and the dollar amount expended on behalf of each employee for health care benefits. However, except as provided otherwise in this subsection for institutions of higher education, negotiations regarding the number of names to be certified for vacancies, promotional preferences, and the dollar amount expended on behalf of each employee for health care benefits shall be conducted between the employer and one coalition of all the exclusive bargaining representatives subject to this chapter. Any such provision agreed to by the employer and the coalition shall be included in all master collective bargaining agreements negotiated by the parties. For institutions of higher education, promotional preferences and the number of names to be certified for vacancies shall be bargained under the provisions of RCW 41.80.010(4).

(4) The employer and the exclusive bargaining representative shall not agree to any proposal that would prevent the implementation of approved affirmative action plans or that would be inconsistent with the comparable worth agreement that provided the basis for the salary changes implemented beginning with the 1983-1985 biennium to achieve comparable worth.

(5) The employer and the exclusive bargaining representative shall not bargain over matters pertaining to management rights established in RCW 41.80.040.

(6) Except as otherwise provided in this chapter, if a conflict exists between an executive order, administrative rule, or agency policy relating to wages, hours, and terms and conditions of employment and a collective bargaining agreement negotiated under this chapter, the collective bargaining agreement shall prevail. A provision of a collective bargaining agreement that conflicts with the terms of a statute is invalid and unenforceable.

(7) This section does not prohibit bargaining that affects contracts authorized by RCW 41.06.142.

[2002 c 354 303.]

APPENDIX 5: STUDY METHODOLOGY

INTERVIEWS AND SURVEYS

To learn about state government's competitive contracting experiences, JLARC staff interviewed and surveyed state managers. We interviewed managers from 23 state agencies and higher education institutions. We also conducted a brief e-mail survey which managers from an additional 16 state agencies completed.

Combined, these agencies and higher education institutions represent 93 percent of the \$7.4 billion the state spent on contracts in Fiscal Year 2006. To calculate this percent, we used 2006 total operating budget data from the Legislative Evaluation and Accountability Program. We selected all of Object C, Personal Service Contracts, as well as sub-objects ER – Other Contractual Services and NB – Direct Payments to Providers. We included just operating expenditures as capital expenditures may be covered by different public works related contracting laws and procedures.

Interviews

JLARC staff interviewed managers from the following agencies and higher education institutions. These agencies and higher education institutions represent 90 percent of the total amount the state spent on contracts in Fiscal Year 2006.

State Agencies

- Department of Corrections
- Department of General Administration
- Department of Information Services
- Department of Labor and Industries
- Department of Natural Resources
- Department of Social and Health Services
- Department of Transportation
- Department of Veteran's Affairs
- Liquor Control Board
- State Parks and Recreation Commission
- Washington State Patrol

Community Colleges

- Bellevue Community College
- Centralia College
- Columbia Basic Community College
- Seattle Community College

Spokane Community College

Yakima Valley Community College

Universities and Colleges

Central Washington University

Eastern Washington University

The Evergreen State College

University of Washington

Washington State University

Western Washington University

Survey

JLARC staff also conducted a brief e-mail survey with phone follow-up in order to look for other instances of competitive contracting. Sixteen agencies responded to the survey. These agencies make up 3 percent of the total amount the state spent on contracts in Fiscal Year 2006. The following agencies responded to the survey:

Department of Agriculture

Department of Archeology and Historic Preservation

Department of Ecology

Department of Financial Institutions

Department of Fish and Wildlife

Department of Health

Department of Licensing

Department of Retirement Systems

Department of Revenue

Department of Services for the Blind

Employment Security Department

Lottery Commission

Military Department

School for the Blind

School for the Deaf

State Auditor's Office

APPENDIX 6: THE LABOR RELATIONS OFFICE'S GUIDANCE ON BARGAINING RELATED TO CONTRACTS

See following pages.

Labor Relations Office

41.06.142 Contracting*

1. **Is the contracting legislatively mandated, or was it authorized by law before 7/1/05 in 41.06.380 (for general government) or 41.06.382 (for higher education)?**
Yes. Proceed to 11. No. Proceed to 2.
2. **Is the work to be contracted bargaining unit work?**
Yes. Proceed to 3. No. Proceed to 12.
3. **A. Contact your liaison at the Labor Relations Office (LRO).**
B. Notify the union and potentially affected employees that to save money and/or increase efficiency (briefly explain), you are considering contracting X work. (See Sample Letter 1)
C. The union may request information, which you should provide as required by law.
D. The union may demand to bargain.
 - a. Determine what the union wants to bargain, which may include the decision to contract and/or the effects of that decision.
 - b. You will likely have limited information on those topics at this point, since no decision has been made yet.
 - c. Fulfill your duty to bargain.
4. **Will the positions or work of bargaining unit employees be displaced (meaning the employees would be displaced or have their positions reclassified) if the work is contracted?**
Yes. Proceed to 5. No. Proceed to 13.
5. **At least 90 days before requesting bids for the contract, notify the union and any potentially displaced employees that**
 - A. To save money and/or increase efficiency (explain in greater detail if possible)
 - B. You are considering contracting X work, which may displace Y positions
 - C. They have 60 days to offer alternatives to the contracting
 - D. The state will provide resources (describe) to them to assist in generating alternative proposals (See Sample Letter 2)
6. **If the union/employees offer an alternative, contact the LRO.** If it varies in wages, hours and/or working conditions from the Collective Bargaining Agreements (CBAs), those terms must be negotiated with the union before going forward.
7. **If the union/employees offer no alternative(s), or if you reject the proposed alternative(s), notify the union/employees and all bargaining unit employees** that you intend to proceed within 21 days (20 by WAC, 21 under some CBAs) to request bids for the contract. (See Sample Letter 3, A or B)
8. **If the union/employees form one or more Employee Business Units (EBUs) to compete for the contract, they**
 - A. Must notify you
 - B. Will have access to the bid process and preparation training provided by the Department of Personnel and General Administration
 - C. Need to be notified that proposal acceptance will be conditioned upon resolution of differences with CBAs, if any. (See Sample Letter 4)

Performance Audit of the Implementation of Competitive Contracting

If an EBU is formed, proceed to 9. If no EBU is formed, proceed to 10.

9. If an EBU wins the contract, stop. If the EBU loses the contract, proceed to 10.

10. (From 8 and 9 above) **If the contract is awarded to a private entity, the union may demand to bargain its effects, and you must fulfill your duty to bargain.** Notify all unions. *(See Sample Letter 5)*
11. (From 1 above) **Even if the contracting was legislatively mandated or was authorized by law before 7/1/05, you may have a duty to provide information and/or bargain the effects of the contracting.** This is because the mandate and/or authorization related only to the decision to contract; the effects of contracting remain subject to bargaining.
- A. Contact the LRO.
 - B. Notify the union and potentially affected employees that the legislature has mandated that X work be contracted or that the work to be contracted was authorized before 7/1/05. *(See Sample Letter 6)*
 - C. The union may request information, which you should provide as required by law.
 - D. The union may demand to bargain.
 - a. Determine what the union wants to bargain.
 - b. Fulfill your duty to bargain the effects.
12. (From 2 above) **Even if the work to be contracted is not bargaining unit work, you may have a duty to provide information and/or bargain the effects on another bargaining unit's members.**
- A. Contact the LRO.
 - B. Notify the union and potentially affected employees that to save money and/or increase efficiency, you are considering contracting X work, which could affect their work. *(Sample Letter 7)*
 - C. The union may request information, which you should provide as required by the law.
 - D. The union may demand to bargain.
 - a. Determine what the union wants to bargain.
 - b. Fulfill your duty to bargain the effects.
13. (From 4 above) **Even if the positions or work of bargaining unit employees will not be displaced, if the work is contracted, you may have a duty to provide information and/or bargain because it "affects the bargaining unit."**
- A. This can occur if:
 - a. Bargaining unit positions are left unfilled;
 - b. Bargaining unit positions are filled with non-unit employees; or
 - c. Non-bargaining unit positions are added to perform fundamentally the same work as bargaining unit positions.
 - B. If this occurs, the union may request information, which you should provide as required by law.
 - C. If this occurs, the union may demand to bargain.
 - a. Determine what the union wants to bargain, which may include the decision to contract and/or the effects of that decision.
 - b. Fulfill your duty to bargain.

* Find additional contracting information in the Washington State Competitive Contracting Manual, located online at <http://ga.wa.gov/competitivecontracting/CCmanual.htm>.

