

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

REPORT DIGEST
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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.