Washington State Department of Enterprise Services

Washington State Court of Appeals, Division II ruling invalidates three rules relating to Competitive Contracting

- In 2004, General Administration (GA) adopted extensive rules related to competitive contracting "to ensure that bids are submitted and evaluated in a fair and objective manner…" (RCW 41.06.142).
- In 2007, the Washington Federation of State Employees (WFSE) filed suit challenging GA's rulemaking authority and interpretation of the law on three narrow sections of GA's rules:
    1. WAC 236-51-006: If state employees will not be displaced, agencies shall comply with RCW 41.06.142 (1)(a), (d) and (e), and applicable laws and rules governing the purchase of such services.
    2. WAC 236-51-010 (11): "Displaced employee" means a classified employee whose position or work would be eliminated, resulting in the employee being laid off or assigned to a different job classification, as a result of an award via the competitive contracting process.
    3. WAC 236-51-225 - An employee business unit (EBU) awarded a contract by an agency shall not perform or bid on solicitations for services not contained in its contract unless their agency approves in writing.
- On September 15, 2009, the Court of Appeals Division II ruled:
    1. The first two rules exceeded GA's statutory authority. The Court held that GA's definition of displaced employee may be "appropriate to assist in carrying out the statute's objectives," but it is not within the specific scope of crafting a bid process.
    2. The Court affirmed that the third rule was within GA's scope of authority, but deemed it invalid because they found it unsupported by the statute.
- Shortly after the ruling, GA filed an interpretive policy statement for publication in the Washington State Register informing state agencies of the Court ruling and directing them to apply the text of RCW 41.06.142 regarding displaced positions or work to their specific situation to determine if competitive contracting applies.

What is the effect of the ruling?

- Most of GA's original competitive contracting rules are still in full force and effect. These rules were recodified without further changes when GA was consolidated into DES.
- The three sections cited above are not in effect, and have not been since the lower court ruling in July 2008.