



# Washington State Department of Enterprise Services

<b>POLICY # DES-210-01</b>	<b>AGENCY CONTRACT REPORTING (RCW <u>39.26.210</u>)</b>
<b>Purpose:</b>	This policy provides the following information: <ol style="list-style-type: none"><li>1) Agency contract reporting requirements.</li><li>2) Reporting timelines.</li><li>3) The required data elements to be reported.</li><li>4) Reporting exemptions.</li></ol>
<b>Enabling Legislation: RCW <u>39.26.210</u>(1)</b>	Effective January 1, 2013, agencies must annually submit to the Department of Enterprise Service (DES) a complete list of all contracts entered into or renewed except for those that are otherwise exempt. This information will be maintained by DES and be made available for public inspection. The reporting period will be for the fiscal year, July 1 through June 30. Agency reports must identify: <ol style="list-style-type: none"><li>1) The contracting agency;</li><li>2) The contractor;</li><li>3) The purpose of the contract;</li><li>4) Effective dates and period of performance;</li><li>5) The cost of the contract and the funding source;</li><li>6) Any substantive modifications to the contract; and</li><li>7) Whether the contract was competitively procured or awarded on a sole source basis.</li></ol>
<b>Contract Reporting Purpose</b>	The purpose of the reporting and display requirements is to foster transparency related to state procurement processes and agency contracts. Vendors, legislators, and the public in general are all interested in knowing how agency spend their funds, how much of those funds are for contracted services, with whom the agencies contract and how these goods and services are procured. Open government not only relies on the ability to collect data but is dependent on and is fostered by the ease in which this data can be readily accessed by all interested parties. Requiring the annual reporting of information related to state contracts and requiring DES to make this information publicly available promotes both of those

	aspects of open government.
Contract Reporting General Requirements:	<p>The following general requirements apply to all agencies that must report under RCW 39.26.210(1).</p> <ol style="list-style-type: none"> <li>1) State agencies must annually submit to DES a list of all contracts that the agency has entered into or renewed in the prior fiscal year.</li> <li>2) The reporting period is for the fiscal year and should reflect the cost of contract expenditures during the fiscal year (July 1-June 30).</li> <li>3) The report must be submitted to DES no later than September 1<sup>st</sup> of each year.</li> <li>4) The report must include any contract executed during the reporting period that has a statement of work or exceeds the Direct Buy limit.</li> <li>5) The annual list must include all the required data fields for each contract reported.</li> </ol>
Required data fields:	<p>Below is a list of the required data fields and a description of the information that each field is intending to capture.</p> <ol style="list-style-type: none"> <li>1) <u>Contracting Agency.</u> Field description: The name of the state agency that is a party to the contract.</li> <li>2) <u>Contractor name.</u> Field description: The name of the contractor as it appears in the contract document, who is the party to the contract.</li> <li>3) <u>Vendor Identifier:</u> Field description: In order to identify all contracts related to any one vendor, it is important to have an identifier that relates to the vendor. Not all agencies or vendors use the same identifier. This field will require inclusion of either the Universal Business Identifier (UBI) or Tax Identification Number (TIN) or both if available. If neither is available, the agency should include an identifier unique to that contractor.</li> <li>4) <u>Purpose of the contract.</u> Field description: The subject matter of the contract; the goods or services that the agency is procuring. The field will provide a list of categories with the ability to include an expanded description.</li> <li>5) <u>Effective dates.</u> Field description: The date the contract becomes effective, not when work actually began. The ending date will be the date upon which no further work may be conducted under the contract or the date the contract term ends or expires.</li> <li>6) <u>Period of Performance.</u> Field description: The time frame in which the work is to occur or</li> </ol>

	<p>when the commodity must be delivered. The period of performance should always begin on or after the contract effective date and end on or prior to the contract expiration date.</p> <p>7) <u>The cost of the contract.</u>  Field description: The total actual or estimated contract cost over the reporting period. The cost of a contract may differ depending on the contract type. For a commodity contract, the cost of the contract is the cost of the commodity purchased, excluding taxes. If the contract is a services contract, the cost is either the estimated cost of the services, the not to exceed cost listed in the contract or the actual amount paid under the contract. The agency will also have the option to include a brief explanation.</p> <p>8) <u>Funding source.</u>  Field description: The funding source is the category of funds used for the contract. The funding source is either state funds, federal funds or private grant funds. For contracts that have more than one funding source, the agency will report the most dominate funding source.</p> <p>9) <u>Contract Modifications</u>  Field description: Contract modifications are substantive changes made to an original contract. A substantive change is one that modifies the cost, scope or period of performance of the original contract.</p> <p>10) <u>Whether the contract was competitively procured or awarded as a sole source.</u>  Field description: A contract is awarded by either a competitive process or a noncompetitive process. Noncompetitive processes include, sole source, sole source exempt from filing, emergency contracts and direct buy. A competitive process is one where more than one vendor is provided the opportunity to compete for the contract award.</p> <p>11) <u>Small Business Status (Optional).</u>  Field description: The contractor's status as a small business as identified in the Washington Electronic Business Solution (WEBS) system.</p>
<p>Contract Reporting Exemptions:</p>	<p>Agencies will not be required to report the following:</p> <ol style="list-style-type: none"> <li>1) Purchase orders or Field orders</li> <li>2) Direct Buy contracts except those contracts that include a statement of work.</li> <li>3) Expert witness agreements.</li> <li>4) Public works contracts (although agencies are encouraged to do so).</li> <li>5) Non fiscal agreements which are agreements that do not include a</li> </ol>

	<p>monetary component such as a data sharing agreement or confidentiality agreement.</p> <p>6) Interlocal agreements and interagency agreements.</p> <p>7) Grant and sub-grant agreements.</p> <p>8) Loan agreements.</p> <p>9) Contracts exempt from disclosure under another state law.</p> <p>10) Contracts specifically exempted by the DES director.</p>
Request for Reporting Exemptions	<p>Agencies may also request a reporting exemption for a specific contract or a category of contracts. The request should be in writing, addressed to the DES director, and signed by the agency head. The request must include a detailed explanation of the proposed exemption, why the contract or contract category needs to be exempt, and how granting the request aligns with the intent of the law.</p>
Definitions:	<p>“<u>Click thru agreement</u>” means an on-screen license agreement that is accepted by the user by clicking a button.</p> <p>“<u>Contract</u>” means an agreement for goods, commodities, information technology goods and services, personal services, purchased services and client services, as well as software licenses, click thru agreements and equipment maintenance.</p> <p>“<u>Non-fiscal agreements</u>” means agreements that do not include a monetary component such as a data sharing agreement or confidentiality agreement.</p> <p>“<u>Qualified master contracts</u>” means:</p> <ol style="list-style-type: none"> <li>1) DES Master Contracts; and</li> <li>2) Cooperative contracts that conform to all applicable Washington State procurement laws, rules, policies and trade agreements.</li> </ol>
Compliance:	<p>Agencies are expected to submit complete and timely contract reports. The agency’s record of compliance will be factored into an agency’s risk rating.</p>
FAQ:	<p>Q1: Since the effective date is January 1, 2013, what will be the initial reporting period?</p> <p>A: All contracts with an effective date on or after January 1, 2013 must be reported as well as all current contracts that have been amended with an amendment effective date on or after January 1, 2013. The end date of the initial reporting period will be announced once the DES reporting system is in place.</p> <p>Q2: Will agencies be required to report procurements made using qualified master contracts?</p> <p>A: Yes but only if the use of qualified master contract results in an agency specific contract that includes a statement of work. The agency should</p>

report the effective dates of the agency specific contract.

**Q3: Will agencies be required to report Click thru agreements including those that have a fee?**

**A: Yes. Click through agreements may impact other software agreements and therefore must be reported.**

**Q4: Will agencies be required to report P-Card transactions?**

**A: No. The P-Card is a method of payment, not a type of contract. Use of a P-Card does not determine whether the contract is reportable. See "Contract Reporting Exemptions" for those contracts that are exempt from reporting.**





# Washington State Department of Enterprise Services

<b>Policy # DES-170-00</b>	<b>COMPLAINTS AND PROTESTS (RCW <u>39.26.170</u>)</b>
<b>Purpose:</b>	<p>This policy provides the following information:</p> <ol style="list-style-type: none"><li>1) Minimum requirements for a complaint process and a protest process.</li><li>2) The criteria for filing a complaint or protest.</li><li>3) Agency response requirements and timelines.</li><li>4) How to request authority to sign a contract before the protest process is completed.</li></ol>
<b>Enabling Legislation: RCW <u>39.26.170</u></b>	<p>Beginning January 1, 2013, agencies with original or delegated authority must have a procurement complaint process and protest process, both of which are clear and transparent. In addition:</p> <ol style="list-style-type: none"><li>1) The complaint process, including the agency response to complaints, must occur before the deadline for bid submissions.</li><li>2) The protest process must include a protest period after the apparent successful bidder is announced but before the contract is signed.</li></ol>
<b>Complaint Process Purpose and Requirements:</b>	<p>The complaint process occurs early in the procurement process. The purpose of a complaint process is to settle unresolved vendor issues or concerns that either were not or could not be resolved during the question and answer period. The complaint process allows vendors to focus on the solicitation requirements and evaluation process and raise issues with these processes early enough in the process to allow an agency to correct a problem before bids are submitted and time expended on evaluations. A good complaint process can help reduce or eliminate the number of protests that would later be filed.</p> <p>The agency's procurement complaint process must meet the following minimum requirements:</p> <ol style="list-style-type: none"><li>1) Vendors must be given an opportunity to submit a complaint to the agency based on any of the following:<ol style="list-style-type: none"><li>a) The solicitation unnecessarily restricts competition;</li><li>b) The solicitation evaluation or scoring process is unfair or</li></ol></li></ol>

	<p>flawed; or</p> <p>c) The solicitation requirements are inadequate or insufficient to prepare a response.</p> <p>2) Vendors must be allowed to submit complaints up to 5 business days prior to the bid response deadline. In addition, agencies can require vendor complaints to meet the following requirements:</p> <p>a) Must be in writing.</p> <p>b) Must be sent to the procurement coordinator, or designee, in a timely manner.</p> <p>c) Should clearly articulate the basis for the complaint.</p> <p>d) Should include a proposed remedy.</p> <p>3) The procurement coordinator or designee must respond to complaints in writing.</p> <p>4) The response to complaints including any changes to the solicitation must be posted on <u>WEBS</u>.</p> <p>5) The agency head is to be notified of all complaints and be provided a copy of the agency's response.</p> <p>6) The complaint may not be raised again during the protest period.</p> <p>7) The agency complaint process does not need to include an appeal process.</p>
<p><b>Protest Process Purpose and Requirements:</b></p>	<p>The protest process occurs after the bids are submitted and evaluated. This allows bidders to focus on the evaluation process to ensure its integrity and fairness. Protests can raise issues related to the evaluation process as set out in the solicitation or how it the process was executed. This allows an agency to correct evaluation process errors and problems before a contract is executed.</p> <p>The agency's procurement protest process must meet the following minimum requirements:</p> <p>1) After the announcement of the apparent successful bidder (ASB), agencies must offer a debriefing conference to any bidder upon request.</p> <p>2) Agencies must give bidders a minimum of at least 3 business days after the ASB is announced to request a debriefing conference.</p> <p>3) Agencies can require bidder participation in a debriefing conference as a prerequisite for submitting a protest.</p> <p>4) Agencies must give bidders at least 5 business days after their debriefing conference to file a protest.</p>

	<p>5) The protest process as a minimum, must allow vendors an opportunity to submit a protest based on any of the following:</p> <ul style="list-style-type: none"> <li>a) A matter of bias, discrimination, or conflict of interest on the part of an evaluator;</li> <li>b) Errors in computing the scores; or</li> <li>c) Non-compliance with procedures described in the procurement document or agency protest process or DES requirements.</li> </ul> <p>6) Agencies should assign a neutral party that had no involvement in the evaluation and award process to investigate and respond to the protest.</p> <p>7) Agencies must issue a written protest response no more than 10 business days from receipt of the protest, unless additional time is needed. The agency should notify the protesting bidder if additional time is needed.</p> <p>8) The agency protest decision is final and no appeal process will be required. If a protesting bidder does not accept the agency protest response, the bidder may try to seek relief from superior court.</p> <p>9) At the time that the agency protest response is issued, the agency head and the Department of Enterprise Services Director must be provided a copy of the original protest and the agency's response.</p> <p>10) Small and micro agencies that lack staff to address a protest may request assistance from DES.</p>
<p>Additional Requirements</p>	<p>1) Consistent with RCW <u>39.26.170</u>, all competitive procurements must include an announcement of the ASB(s).</p> <p>2) Consistent with RCW <u>39.26.030</u>, following the announcement of the ASB(s), bid submissions and bid evaluations must be available for public inspection.</p>
<p>Compliance:</p>	<p>Agencies are expected to exercise sound professional judgment in implementing an objective and transparent complaint process and protest process. The agency's record of compliance will be factored into the agency risk assessment.</p>
<p>Exemptions: RCW <u>39.26.170(3)</u></p>	<p>The agency may not sign a contract before the protest process is completed except when the Enterprise Services Director grants the agency the authority to do so. Authority will only be granted if there are exigent circumstances that necessitate the contract to be signed. To request an exemption, the agency head must submit the request to the Enterprise Services Director. The request should explain the exigent circumstances and why it would be in the best interest of the state to grant the request.</p>

<p>Definitions:</p>	<p>“Apparent Successful Bidder” is the lowest responsive and responsible Bidder as determined by the bid evaluation process and prior to Bidder negotiations. (See RCW <u>39.26.160(6)</u>)</p> <p>“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. (See RCW <u>39.26.010(2)</u>)</p>
<p>FAQ:</p>	<p>Q1: Does the complaint and protest policy apply to low dollar request for quotes (RFQs) in which the lowest bid price determines the award?</p> <p>A: Yes.</p> <p>Q2: What if the agency has an urgent need that cannot accommodate the length of time it takes to fulfill the required complaint and protest timelines?</p> <p>A: Most agency procurement needs may be satisfied through proper planning, direct buy provisions or use of qualified master contracts. However, if DES procurement analysis suggests otherwise, an exemption may be granted or procurement policies may be modified.</p> <p>Q3: Will solicitations released prior to January 1, 2013 be exempt from this policy?</p> <p>A: Yes. Agencies are to follow the related laws, rules, and policies in force at the time when the solicitation was released.</p> <p>Q4: When should a protest bond be required and how do you set the bond limit?</p> <p>A: DES is in the process of developing a protest bond policy and best practices. Until then, agencies should contact DES prior to requiring a protest bond.</p> <p>Q5. What is a debriefing conference and how do I conduct one?</p> <p>A: A debriefing conference provides an opportunity for the bidder to meet with the agency to discuss its bid and evaluation. DES is developing a debriefing conference policy with information on how to conduct a debriefing conference.</p>



# Washington State Department of Enterprise Services

<b>POLICY # DES-090-00</b>	<b>DELEGATION OF AUTHORITY (RCW <u>39.26.090</u>)</b>			
<b>Purpose:</b>	<p>This policy provides the following information:</p> <ol style="list-style-type: none"> <li>1) The interim delegation of authority to state agencies for the procurement of goods and services.</li> <li>2) Information and direction on how an agency may request and receive additional delegated authority.</li> <li>3) Exemptions from the delegated authority requirement.</li> <li>4) Information on how final delegation of authority will be determined.</li> </ol>			
<b>Enabling Legislation:</b> RCW <u>39.26.090</u>	<p>Beginning January 1, 2013 DES is authorized to contract for all goods and services needed to support and maintain agency operations, except as otherwise provided in law. The Director of DES is also charged with establishing policies for delegating authority to state agencies. Delegation policies must be based on a risk assessment process developed by the department and specify restrictions as to dollar amount or specific types of goods and services.</p>			
<b>General Delegated Authority:</b>	<p>Effective January 1, 2013 and unless otherwise exempted by law, agencies are delegated authority for the procurement of goods and services according to the criteria outlined in the table below. This delegation is independent of the funding source for the procurement. When projecting contract values, agencies should do so in a manner that is true to the intent of these thresholds.</p>			
	<p><b>Agency Size</b></p>	<p><b>Commodities</b> <b>(projected amount per purchase event)</b></p>	<p><b>Services</b> <b>(projected amount of initial contract term)</b></p>	<p><b>Information Technology</b> <b>(projected amount of the initial contract term)</b></p>
	<p><b>*Micro</b> (Less than 50 FTEs)</p>	<p>\$50,000</p>	<p>\$50,000</p>	<p>\$50,000</p>
	<p><b>*Small</b> (50 – 200 FTEs)</p>	<p>\$50,000</p>	<p>\$250,000</p>	<p>\$250,000</p>
	<p><b>Medium</b> (201 – 500 FTEs)</p>	<p>\$50,000</p>	<p>\$500,000</p>	<p>\$500,000</p>
	<p><b>Large</b> (more than 500 FTEs)</p>	<p>\$50,000</p>	<p>\$1 million</p>	<p>\$1 million</p>
<p>*The delegation to micro and small agencies is limited to those agencies that have “dedicated procurement professionals” performing agency procurements. If the agency does not have procurement professionals on staff, the agency will need to contact DES to obtain its interim authority.</p>				

<p>Additional Delegated Authority</p>	<p>Agencies have unlimited delegated authority when purchasing directly from a “qualified master contract”.</p> <p>If a master contract requires a second tier competition, agencies delegation of authority is:</p> <ol style="list-style-type: none"> <li>1) Unlimited when the contract requires DES to conduct the second tier competition; or</li> <li>2) Limited to the delegation set forth above if the agency will be conducting the second tier competition.</li> </ol>
<p>Additional Requirements:</p>	<ol style="list-style-type: none"> <li>1) Agencies must use existing “qualified master contracts” unless the contract cannot justifiably satisfy agency needs.</li> <li>2) Agencies must satisfy all applicable Washington State procurement requirements when conducting procurements within their delegated authority.</li> <li>3) Agencies may implement further restrictions or requirements at the agency level.</li> <li>4) Agencies must notify DES in advance regarding procurements that may exceed the agency’s delegated authority. DES will consult with the agency to determine whether to conduct the procurement, monitor the agency conducting the procurement or delegate full authority to the agency to conduct the procurement.</li> <li>5) For contracts that include a combination of goods and services, apply the category threshold that represents the predominant category for that procurement. For example: <ul style="list-style-type: none"> <li>A Medium sized agency will be contracting for a combination of goods (\$40,000) and services (\$60,000) for a combined value of \$100,000. Because this contract is predominately services (\$60,000) and the value is below the delegated threshold for that category, the agency can proceed without further involvement of DES.</li> <li>If these values were reversed (\$60,000 goods, \$40,000 services totaling \$100,000), the contract would be predominately goods. Since the value of the goods exceeds the threshold for that category, the agency would not have delegated authority and would need to engage DES.</li> </ul> </li> </ol>
<p>Information Technology Procurements:</p>	<p>Chapter <u>43.41A</u> RCW provides the Office of the Chief Information Officer (OCIO) authority over <u>the types of</u> information technology (IT) goods and services agencies may acquire.</p> <p>Effective January 1, 2013, DES under Chapter <u>39.26</u> RCW will establish <u>how</u> goods and services are to be acquired.</p> <p>Therefore, in addition to DES delegated authority, agencies may also be required to receive OCIO approval for certain IT goods and services as required by OCIO <u>Policy #121</u>. Agencies should coordinate with their assigned <u>OCIO consultant</u>. DES will also be available to assist agencies.</p>

<p><b>Additional Delegated Authority Requests</b></p>	<p>In addition to the delegations of authority, agencies may request additional delegated authority. To do so the agency head must submit the request to the DES director with answers to the following questions:</p> <ol style="list-style-type: none"> <li>1) What is the purpose, the scope and the specific nature of the request?</li> <li>2) What is the projected dollar value of the request, including analysis that determined the cost estimate?</li> <li>3) How might the state/agency benefit should the request be approved?</li> <li>4) What are the risks should the request be denied?</li> <li>5) Does the agency possess the necessary experience and expertise to conduct the procurement and/or to manage the contract? If so, explain.</li> <li>6) What measures have been established to ensure that all applicable procurement requirements will be met?</li> <li>7) Contact information of the person responsible for implementing the requested delegation of authority.</li> </ol>
<p><b>Compliance:</b></p>	<p>DES may at any time and at its discretion withdraw or modify an agency's delegated authority based upon its procurement compliance, performance, and/or risk profile. Agencies are encouraged to implement agency-wide requirements and processes that best ensure that the agency conforms to applicable procurement requirements.</p>
<p><b>Exemptions:</b></p>	<ol style="list-style-type: none"> <li>1) Institutions of Higher Education having independent purchase authority under <u>RCW 28B.10.029</u>.</li> <li>2) Emergency Purchases that qualify under <u>RCW 39.26.130</u>.</li> <li>3) Exemptions as outline under <u>RCW 39.26.100</u>.</li> <li>4) Interagency agreements.</li> <li>5) Interlocal agreements.</li> </ol>
<p><b>Definitions:</b></p>	<p><b><u>"Dedicated procurement professional"</u></b> means a state employee possessing the knowledge, skills, and abilities through training and education who is able to develop and draft transactionally relevant procurement and contract documents to support agency operations.</p> <p><b><u>"Qualified master contracts"</u></b> means:</p> <ol style="list-style-type: none"> <li>1) DES Master Contracts.</li> <li>2) Cooperative contracts that conform to all applicable Washington State procurement laws, rules, policies and trade agreements.</li> </ol> <p><b><u>"Information technology"</u></b> under <u>RCW 43.41A.006(8)</u> includes, but is not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications, requisite system controls, simulation, electronic commerce, and all related interactions between people and machines. DES will be coordinating with the OCIO to provide additional clarification.</p>

**FAQs:**

**Q1: How is delegated authority to be applied to a project that may include multiple contracts?**

**A: For those projects that warrant the creation of multiple contracts, the dollar value of each contract will determine which delegated authority applies.**

**Q2: How are procurements that are already underway to be handled once chapter 39.26 RCW becomes effective on January 1, 2013?**

**A: The applicable procurement authority in existence prior to January 1, 2013 will apply to procurements that were advertised prior to January 1, 2013 but have not been awarded. All applicable procurements advertised after January 1, 2013 must comply with chapter 39.26 RCW.**



# Washington State Department of Enterprise Services

<b>POLICY # DES-125-03</b>	<b>DIRECT BUY PROCUREMENTS/PURCHASES (RCW <u>39.26.125</u>)</b>
<b>Purpose:</b>	This policy provides the following information: <ol style="list-style-type: none"><li>1) An established dollar threshold in which agencies may acquire goods and services directly from a vendor without requiring a competitive process.</li><li>2) Implementation requirements, guidelines, and exemptions for direct buy purchases.</li></ol>
<b>Enabling Legislation: RCW <u>39.26.125</u> (3)</b>	Beginning January 1, 2013, the Department of Enterprise Services (DES) director is required to establish policies for direct buy purchases/procurements. Direct buy purchases are exempt from competitive solicitation requirements.
<b>Direct Buy Purchase Authorization:</b>	Effective January 1, 2013, agencies are authorized to purchase goods and services up to a cost of \$10,000 (excluding sales tax) directly from a vendor and without competition. In addition, agencies are authorized to purchase goods and services up to a cost of \$13,000 (excluding sales tax) directly from a vendor and without competition if the purchase is being made from a microbusiness, minibusiness, or small business as those terms are defined by RCW <u>39.26.010</u> (17), (18) and (21).
<b>Additional Requirements:</b>	<ol style="list-style-type: none"><li>1) Agencies must use existing "qualified master contracts" before engaging in a direct buy. Only when an existing qualified master contract cannot justifiably satisfy agency needs may the agency make a direct buy purchase.</li><li>2) Agencies are encouraged to buy from in-state small businesses to include certified minority, women and veteran owned businesses.</li><li>3) Unless otherwise exempt, procurements that exceed the direct buy limit must be competitively awarded, unless otherwise exempt from competition.</li><li>4) Agencies may not unbundle or manipulate a purchase to have the purchase qualify as a direct buy procurement to avoid using a competitive process.</li></ol>
<b>Information Technology Procurements:</b>	All applicable information technology related procurements must conform to OCIO Policy #121. Agencies may need to coordinate with their assigned <u>OCIO consultant</u> . DES will also be available to assist agencies.

Compliance:	Agencies are to exercise sound professional judgment in implementing direct buy. An agency's record of compliance with the direct buy policy will be a factor in an agency's risk assessment.
Definitions:	<p>“<u>Direct Buy</u>” means a procurement not requiring a competitive process.</p> <p>“<u>Qualified Master Contracts</u>” means:</p> <ol style="list-style-type: none"> <li>1) DES Master Contracts.</li> <li>2) Cooperative contracts that conform to all applicable Washington State procurement laws, rules, policies and trade agreements. DES will maintain a list of cooperative contracts that meet state requirements.</li> </ol>
Best Practice	Agencies should monitor repetitive purchases. When warranted, agencies should pursue an aggregated buy or notify DES of a potential master contract opportunity.



# Washington State Department of Enterprise Services

<b>POLICY # DES-130-00</b>	<b>EMERGENCY PROCUREMENTS/PURCHASES (RCW <u>39.26.130</u>)</b>
<b>Purpose:</b>	This policy provides the following information: <ol style="list-style-type: none"><li>1) Emergency procurement criteria and qualifications.</li><li>2) Emergency procurement reporting requirements and timelines.</li><li>3) Emergency procurement reporting exemptions.</li></ol>
<b>Enabling Legislation:</b> RCW <u>39.26.130</u>	Beginning January 1, 2013 and unless otherwise exempt, the agency head must submit written notification of an emergency procurement within three business days to the Department of Enterprise Services (DES) director. To qualify as an emergency procurement, the event must represent a set of unforeseen circumstances beyond the control of the agency that either: <ol style="list-style-type: none"><li>(a) Presents a real, immediate, and extreme threat to the proper performance of essential functions; or</li><li>(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.</li></ol>
<b>Emergency Procurement Reporting Requirements:</b>	Effective January 1, 2013, all emergency procurements must be reported using the DES <u>Sole Source Contract Database (SSCD)</u> within <u>3 business days</u> of initiating the emergency procurement. The SSCD will prompt the agency to provide the following information: <ol style="list-style-type: none"><li>1) An overview of the nature of the emergency including relevant circumstances.</li><li>2) A description of the threat to the health or safety of individuals, property, or essential state functions if immediate action is not taken to include an estimate of the potential material loss or damage.</li><li>3) An account of how the contractor alleviated or eliminated the emergency to include a description of what the consequences would have been if the emergency action had not been taken and the risks associated with inaction.</li><li>4) A summary of the contractor's qualifications, experience and background to provide the emergency service and the basis on which this contractor was selected over other qualified firms.</li><li>5) Specify the costs, fees, or rates for the purchase.</li><li>6) An uploaded copy of an Emergency Memo that has been signed by the agency head.</li></ol>

Additional Requirements	<ol style="list-style-type: none"> <li>1) Agencies are always expected to utilize existing qualified master contracts except when the contract cannot justifiably satisfy agency needs. The agency needs includes the ability to provide a timely response to an emergency.</li> <li>2) The duration of the emergency contract must not extend beyond the time needed to resolve the immediate threat.</li> <li>3) Emergency procurements are only to be conducted for legitimate and qualified emergencies. Emergency procurements are not a substitute to avoid competition or mitigate for the time needed to competitively procure the goods or services.</li> </ol>
Transparency Requirements:	<p>RCW <u>39.26.130(2)</u> requires that within 3 business days of commencing work or executing the emergency contract, whichever comes first, a state agency must make the emergency contract available for public inspection. The state agency may either post the emergency contract on the agency website or post summary information that includes directions for obtaining a copy of the emergency contract.</p> <p>DES will be working on developing a state emergency contracts web page where all agencies will be able to post emergency contract information. This will take the place of agencies posting the information on their separate websites.</p>
Compliance:	<p>Emergency procurements are not approved by DES. However, DES will review agency records for compliance with emergency procurements requirements as part of the agency's risk assessment. Compliance may influence an agency's delegated authority.</p>
Exemptions:	<p>Agencies are not required to report to DES an emergency procurement that qualifies as a "Direct Buy" procurement. See POLICY # DES-125-03.</p>
Definitions:	<p><b>"Qualified master contracts"</b> means:</p> <ol style="list-style-type: none"> <li>1) DES Master Contracts.</li> <li>2) Cooperative contracts that conform to all applicable Washington State procurement laws, rules, policies and trade agreements. DES will maintain a list of cooperative contracts that meet state requirements.</li> </ol>
Best Practice:	<p>Agencies are also encouraged to keep a detailed emergency contract file that may include pictures, video, receipts and other related information that may be useful in securing emergency financial aid, filing insurance claims or complying with Federal Emergency Management Agency requirements.</p>



# Washington State Department of Enterprise Services

<b>Policy # DES-140-00</b>	<b>SOLE SOURCE CONTRACTS (RCW <u>39.26.140</u>)</b>
<b>Purpose:</b>	<p>This policy provides the following information:</p> <ol style="list-style-type: none"> <li>1) Requirements for justifying a sole source contract.</li> <li>2) Vendor notification requirements.</li> <li>3) Initiating the Department of Enterprise Services (DES) sole source contracting approval process.</li> <li>4) An overview of the DES sole source contracting approval process.</li> <li>5) Satisfying sole source contracting transparency requirements.</li> <li>6) Sole source contracting exemptions.</li> </ol>
<b>Enabling Legislation:</b> <u>RCW 39.26.140</u>	<p>Effective January 1, 2013 and unless otherwise exempt, all agency sole source contracts must:</p> <ol style="list-style-type: none"> <li>1) Be submitted to DES, with supporting justification, not less than 10 working days prior to the contract start date.</li> <li>2) Be approved by DES before the contract becomes binding, services are performed and goods are received.</li> <li>3) Be made available for public inspection not less than 10 working days prior to the contract start date.</li> </ol> <p>In addition, notice of all agency sole source contract opportunities must be posted on the state's enterprise vendor registration and bid notification system (currently the Washington Electronic Business Solution (WEBS)) for at least five (5) working days.</p>
<b>Sole Source Determination and Justification:</b>	<p>It is the intent of the state to promote open competition and transparency for all contracts for goods and services. If an agency concludes that a sole source contract is justified and necessary, the agency must:</p> <ol style="list-style-type: none"> <li>1) Validate that the proposed contract meets the sole source definition in RCW <u>39.26.010</u> (22).</li> <li>2) Verify a competitive process is not warranted. See Vendor Notice below.</li> <li>3) Prepare the sole source contract and all related supporting documentation necessary to initiate the DES approval process.</li> </ol>
<b>Vendor Notice:</b>	<p>In addition to submitting the required supporting documentation, vendors must be given notice and an opportunity to demonstrate that a sole source contract is not justified. Accordingly and unless otherwise exempt, state law requires that at a minimum, sole source contract opportunities must be</p>

Vendor Notice continued:	<p>posted on <u>WEBS</u>. Agencies must:</p> <ol style="list-style-type: none"> <li>1) Use/choose applicable WEBS commodity codes for the product or services being procured including those used by the prospective sole source vendor.</li> <li>2) Post a notice of intent to award a sole source contract on WEBS for not less than 5 working days. The notice must include: <ol style="list-style-type: none"> <li>a. A description of the purpose and scope of the contract.</li> <li>b. The criteria or rationale justifying the sole source contract.</li> <li>c. The name of the prospective contractor.</li> <li>d. The projected contract value.</li> <li>e. The period of performance, including options for extensions.</li> <li>f. Process for vendor inquiries or responses, including timelines and requirements.</li> </ol> </li> </ol>
Initiating DES Sole Source Contract Approval Process:	<p>To initiate the DES approval process, agencies are to utilize the DES <u>Sole Source Contract Database</u> (SSCD). The SSCD will prompt the agency to:</p> <ol style="list-style-type: none"> <li>1) Respond to the sole source justification questionnaire.</li> <li>2) Submit evidence demonstrating the sole source contracting opportunity has been posted on <u>WEBS</u>.</li> <li>3) Upload a copy of the sole source contract.</li> </ol>
DES Approval Process	<p>Unless otherwise exempt, RCW <u>39.26.140(2)</u> states that no sole source contract will be binding unless it is approved by DES. The statute also requires the submittal to DES be not less than 10 working days to enable DES to process sole source contract filings. Agencies are encouraged to budget ample lead time to accommodate the DES approval process, vendor notice requirements, and transparency requirements. In determining whether to approve a sole source contract filing, DES will review all information submitted including vendor challenges and the agency response.</p> <p>Any sole source contract set to begin any time prior to or during the DES processing period will be flagged as a "late filing" and will not receive approval even if all other sole source criteria has been satisfied.</p>
Transparency for the Public:	<p>RCW <u>39.26.140(1)</u> requires that prior to the contract start date, agencies must make sole source contracts available for public inspection for a period of not less than 10 working days. As an interim solution, agencies must post on the agency website either the sole source contract(s) or notice and instructions on how to obtain a copy of sole source contracts. For audit purposes, agencies are encouraged to include in their contract file evidence (e.g. screen print out of webpage) that the 10 business day posting requirement has been met.</p> <p>DES will be working on developing a state sole source contracts web page where all agencies will be able to post sole source contract information. This will take the place of agencies posting the information on their</p>

	separate websites.
DES Sole Source Contract Amendment Approval	All sole source contract amendments must also be filed with and receive prior approval except when changes are minor or technical in nature. Contract amendments will not need to be posted on WEBS or require a 10 business day public inspection period.
Exemptions:	<p>The following types of contracts are exempt from this Sole Source Contracts policy:</p> <ol style="list-style-type: none"> <li>1) Qualified Master Contracts and Direct Buy procurements.</li> <li>2) Qualified contracts with Community Rehabilitation Programs under RCW <u>39.26.230</u>.</li> <li>3) Original equipment manufacturer (OEM) maintenance service contracts and parts purchases when procured directly from the OEM.</li> <li>4) Software maintenance and support services when procured from the proprietary owner of the software. The procurement of software maintenance and support from third party vendors is not exempt from this policy.</li> <li>5) Contracts where the vendor is specifically required by a grant or legislation.</li> <li>6) Expert witness contracts with the Attorney General's Office, or agencies with administrative adjudicative authority.</li> <li>7) Contracts for medical, surgical and dental decisions made by medical professionals.</li> <li>8) Contracts related to educational curriculum.</li> <li>9) Contracts with Correctional Industries established under RCW <u>39.26.251</u>.</li> <li>10) Contracts related to collaborative research.</li> <li>11) Interagency and interlocal agreements.</li> <li>12) Contracts for services related to banking supervision.</li> <li>13) Postal and postal service when not using consolidated mail.</li> <li>14) Utilities such as garbage, heat, sewer, cable television, power, water, fire protection and recycle services.</li> <li>15) Contracts and procurements related to professional development such as conferences, seminars, professional licenses and memberships, professional organizations, and professional publications.</li> <li>16) Replacement or repair of rental equipment when required by the rental agreement.</li> <li>17) Contracts with instate nonprofit agencies for the blind under RCW <u>19.06.020</u>.</li> <li>18) Contracts awarded by institutions of higher education from non-state funds.</li> </ol>
Request for Exemptions:	Agencies may request an exemption for a specific contract or a category of

Request for Exemptions continued:	contracts. Such requests are to be addressed to the DES director and be signed by the agency head. The request must include a detailed explanation of the proposed exemption and how granting the request aligns with the intent of the law.
Information Technology Contracts:	All applicable information technology (IT) related sole source contracts must also conform to OCIO <u>Policy #121</u> and may require advanced approval. Agencies may need to coordinate with their assigned <u>OCIO consultant</u> . DES will also be available to assist.
Compliance:	Agency sole source contracting profile and compliance including the requirements of this policy will be a consideration in the agency's risk rating and may influence the agency's delegation of authority.
Definitions:	<p>“<u>Approval</u>” means that all sole source contracting requirements have been met and the contract may go into effect.</p> <p>“<u>Disapproval</u>” means that all sole source contracting requirements have not been met. Either changes or competition or both may be warranted.</p> <p>“<u>Qualified master contracts</u>” means:</p> <ol style="list-style-type: none"> <li>1) DES Master Contracts.</li> <li>2) Cooperative contracts that conform to all applicable Washington State procurement laws, rules, policies and trade agreements. DES will maintain a list of cooperative contracts that meet state requirements.</li> </ol> <p>“<u>Non-State Funds</u>” means funds provided by other than a state source, such as general fund appropriation or other fee generated funds. Contracts funded by non-state funds means contracts where over 50% of the funding comes from non-state sources.</p> <p>“<u>Sole source</u>” 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.</p> <p>“<u>Software Maintenance and Support</u>” means services (maintenance) provided by a Licensor (proprietary owner) of software products to Licensee including, but not limited to, fixes, upgrades and the like to the software code. Technical services (support) may be included or sold as a separate offering by the Licensor and are covered under this exemption. This exemption <u>does not include</u> maintenance or support services provided by or through a third party.</p> <p>“<u>Collaborative research</u>” means research conducted by an agency or institution of higher education with another public or private entity.</p>
Frequently Asked	Q1 : If DES does not provide a decision within 10 business days of the filing, does the sole source contract automatically become approved?

<p>Questions:</p> <p>Frequently Asked Questions continued:</p>	<p>A: No. The goal of DES is to process all requests within 10 business days. There may be circumstances in which additional time will be required. DES will notify the agency of any delays or need for additional time.</p> <p>Q2: May the 5 business days advertising requirement, the 10 business days approval process and the 10 business days public inspection posting requirement run concurrently?</p> <p>A: Yes.</p> <p>Q3: Are agencies required to report client service contracts?</p> <p>A: No. Client service contracts are exempt from competition and should not be reported as sole source contracts.</p> <p>Q4: Rather than posting on the agency website, can't there be a central repository made available where all sole source contracts may be made available for public inspection?</p> <p>A: DES will be working toward this end but for now and to meet statutory requirements, sole source contract are to be made accessible directly from the agency.</p> <p>Q5: When would a grant require an agency to contract with a specific vendor?</p> <p>A: An agency may name a firm or individual in the written grant application to perform specific services or provide specific goods. If the approval from the funding source and receipt of funds requires the agency to contract with the named vendor, that contract is not required to be competitively awarded, filed with DES, or require approval by DES.</p>
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