

Feedback Number	Workshop Comments - General	Response	Commenter
1	If you have to provide the notice – why don't we just go out for bid? It takes a lot of time to respond to vendors who are not clearly qualified. Takes resources to do this.	The notice requirement (whether on the agency's website or WEBS) provides transparency and is designed to allow vendors the opportunity to demonstrate that a sole source contract is not justified. If agencies receive responses to the notice, they must make a business decision about the best way to proceed. Information received in the responses to the notice can help direct the agency on how to proceed. Some agencies choose to respond and continue with the sole source process; others choose to conduct a competitive procurement.	
4	Consider [a] Sole Source [exemption] when something has copyrights.	We have decided to not add copyright as a general exemption because not every copyrighted item is available from only a single source.	
5	Why does DES need the contract – this is a barrier for agencies to submit and if DES doesn't approve then it was a waste of time.	The statute requires agencies to "submit sole source contracts to DES and make the contracts available for public inspection not less than ten working days before the proposed starting date of the contract." See RCW39.26.140 (1). DES reviews the draft contract for information regarding the validity of the sole source, to confirm that the contract description aligns with the sole source justification/notice, and that the contract content accurately protects the state's interests.	Rick Naten - WSDOT
6	Open POs often are sole source or seem sole source. I know what I am buying but not how many. Cannot provide a draft contract because it is an open purchase agreement. PO comes later. Timing is an issue.	In this situation, the open purchase agreement would be submitted for the sole source filing. If approved, then the POs would be placed against the open purchase agreement. Each PO would not be required to be filed as a separate request for sole source.	
8	If they are supposed to post on agency website and in WEBS. Are we ever only going to get to one posting requirement?	The reason that the notice must be posted in both the agency website and in WEBS is that the agency posting is for public inspection, whereas the WEBS posting is for vendors. The public does not have access to WEBS. The solution by OneWA could potentially resolve the need to post the notice in two locations.	Tammie Wilson - L&I
9	Community Colleges are going to all be using CTC Link – will One Washington take that over?	We are unaware of any plans for OneWA to replace CTC Link. However, DES is working with OneWA to ensure that community colleges will have access to OneWA.	
10	Situation where a contract has changed [the spend for a direct buy unexpectedly exceed the limit] and becomes a sole source which was not intended to be so initially. Need clarification in the policy.	If the original contract was not approved as a sole source, but has since changed and would now qualify as a sole source, then the agency would file a new contract for sole source approval. DES recognizes that there are circumstances which may require other solutions. Agencies should consult with DES in those instances.	DSHS

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11	Would like to have access to the Sole Source Contracts Database (SSCD) so we can see what has been decided in the past. We would like to have access to a document bank so we can rely on past approvals as opposed to contacting the DSHS policy shop.	Agency SSCD Administrators currently have access to this data and have the ability to grant other agency staff access to this data. Agency SSCD Administrators can contact DES if they need assistance.	
12	We cannot amend sole source contracts that were never filed – or have been denied in the past. This includes contracts filed before 2013	This is correct under the current policy and SSCD system. If the original sole source contract filing did not meet the requirements of the sole source policy and was disapproved, the amendment could not meet the sole source requirements (even if it was filed on time and otherwise seems to be a legitimate amendment). Agencies would enter into a new contract at the appropriate time (i.e. renewal time, new phase, etc.) and file the new contract as a sole source.	
13	Need to understand what to do if we filed a contract late and now we want to amend it.	A prerequisite for amending a sole source contract is that the original contract has to be approved. If the original contract was filed late, and was therefore not approved, then an agency must file a new request for a sole source contract. DES will work with the agency to go through the approval process and once the sole source is approved the agency can enter into a valid contract. As a consequence, if additional amendments are needed, the prerequisite would be met.	
14	Western State Hospital exemptions approved by the Director of DES were not required to be filed – what do we do when we want to amend some of those contracts?	If the original contract was exempt from the Sole Source Contracts Policy #DES-140-00, then amendments would be exempt from the Sole Source Contracts Policy as well. However, if the amendment exceeds the authority granted by the DES Director, then the agency would need to request an amendment to the exemption approval from the DES Director.	DSHS
15	State Investment Board – splitting policy (Peabody) from procedure. This policy is a mixture of both. I split it for SIB staff.	Thank you for this feedback. DES has adopted this suggestion.	
16	The sole source policy doesn't do a good job of defining a sole source and would suggest defining what qualifies as a sole source.	Section 39.26.090 defines Sole Source as "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."	Michael Maverick - DOH
18	Create escalation process if there is a disagreement with the policy team.	DES' practice in these circumstances is to consult the DES Contracts & Procurement Assistant Director.	

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19	Certain language that needs to be included in the contract should be in the policy. Anything that could hold-up approval of the sole source process should be known to us.	It is not possible to anticipate the language needed in a specific contract because contract terms and conditions vary depending on the transaction. Instead, DES provides training, guidance, and relevant information to assist agencies in including the correct contract language. DES works with agencies to ensure that the sole source filing contains the necessary language that will result in timely processing of the sole source request.	
20	Why have language added to the contract about when the contract becomes effective and then we have to go back and negotiate with the vendor. Confusion created. Policy requires agency to do that so clause seems redundant to add to contract. Should this go into the legal posting instead of the contract?	DES assumes that the language referred to in this comment is the DES Filing Language, which states "The provisions of Chapter 39.26 RCW require the agency to file this sole source contract with the Department of Enterprise Services (DES) for approval. The effective date of this contract is upon DES approval of the contract, the tenth (10th) working day after it is filed with DES, or as agreed between the parties, whichever is later." The intent of this language is to clarify the contract effective date, considering the DES approval step and 10 day filing period. This is for the contractor's benefit, as they are not aware of the policy, to communicate the requirements needed before they can execute the contract work. Agencies should include this provision in the contract to ensure it is a contractual obligation.	
21	Another issue around why the DES Approval language is required in contract before the approval process. Suggested that it is a practice, but shouldn't be in the contract. Should be in posting instead.	DES assumes that the language referred to in this comment is the DES Filing Language, which states "The provisions of Chapter 39.26 RCW require the agency to file this sole source contract with the Department of Enterprise Services (DES) for approval. The effective date of this contract is upon DES approval of the contract, the tenth (10th) working day after it is filed with DES, or as agreed between the parties, whichever is later." The intent of this language is to clarify the contract effective date, considering the DES approval step and 10 day filing period. This is for the contractor's benefit, as they are not aware of the policy, to communicate the requirements needed before they can execute the contract work. Agencies should include this provision in the contract to ensure it is a contractual obligation.	Mark Gaffney/Kathie Collins - ECY and Ann Polanco
22	Late filing – helpful to have more clarity. If you have already paid it is it a late filing?	Yes. Services performed, or goods provided, under a contract cannot occur before the sole source filing is approved (see RCW 39.26.140 (2)).	
23	Re: 10 days. Suggested clarifying language in policy – be clear that the intent is that agencies don't start work until DES approves (restating the law language of 10 days is confusing)	DES has added the following language to policy Section 2(4) to address this suggestion: "Agencies must wait for DES approval before the contract becomes binding, services are performed, or goods are received."	

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24	Many community colleges just post a formal bid on webs as opposed to going through sole source process or they are finding other funding sources so they can avoid the sole source process and push things through.	The Sole Source process is designed to provide transparency and public notice to a procedure that is an exception to the competitive procurement requirement.	
25	In addition to the 10 days we spend 10 days before that to gather the information so may as well post it to WEBS and do a formal bid.	The Sole Source process is designed to provide transparency and public notice to a procedure that is an exception to the competitive procurement requirement.	
26	At DSHS we do not do a solicitation instead of filing a sole source. There seems to be a time and work benefit to do the sole source.	This comment validates the Sole Source process, which is designed to provide transparency and public notice to a procedure that is an exception to the competitive procurement requirement.	DSHS
27	Would be helpful to have access to the sole source questions before going to the SSCD to begin a filing. This would allow us to begin working on the questions before we start the filing.	The sole source questions are available on the DES Website at : https://des.wa.gov/sites/default/files/public/documents/ContractingPurchasing/templates/SSCD_justification_templates/Sole_Source_Contract_Justification_Template.docx?9a84e	
28	Site the sole source questions in the policy, so people can see and prepare for them.	The sole source questions are available on the DES Website at : https://des.wa.gov/sites/default/files/public/documents/ContractingPurchasing/templates/SSCD_justification_templates/Sole_Source_Contract_Justification_Template.docx?9a84e	
29	The policy is designed more for sole source contracts and makes sole source purchases a little confusing because most of the language is around contracts.	Added a definition "Sole Source Contract" to the policy under Section 13. Sole Source Policy applies to contracts, purchase orders, field orders, etc., so long as the acquisition exceeds the direct buy limit. The format of the acquisition, whether contract, purchase order, field order, etc. is irrelevant.	Daniel Larson - DOC
30	Can we build in a longer time for a sole source contract (i.e. 20 year – initial 2 year approval and an 18 year approval moving forward)	The advantages obtained through a sole source contract are not static, as the market is constantly changing. To ensure that the state continues to receive the benefits of competition and transparency, long term sole source contracts are disfavored.	
31	[Does a] piece of test equipment that is only provided by one vendor – used for calibrating [qualify as a sole source?]	Yes. If the vendor is the only available source, as it appears to be the case here, then it would qualify as a sole source.	

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32	Should add a Safe Harbor provision – customer agency will be given deference/discretion as to the interpretation unless grossly negligent.	DES is the agency responsible for implementing procurement law by creating policies. A safe harbor provision is not necessary. If agencies need assistance, DES is available to provide any requested consultation.	
34	Should better utilize the sole source contract database – what goes into the database and what information is kept. If DES has already cleared a sole source in the past why can't we use the authorization for others agencies moving forward.	Using the authorization obtained by other agencies does not meet the transparency requirements for sole source contract filings per RCW 39.26.140(1).	
35	Why can't we collect the sole source vendors in the database and agencies use that as justification, so they don't have to go through the approval process again.	This does not meet the transparency requirements for sole source contract filings per RCW 39.26.140(1).	
37	Having a database – can you possibly have a renewal process as opposed to posting, etc. (renew button) if nothing has changed?	This does not meet the transparency requirements for sole source contract filings per RCW 39.26.140(1).	
38	There should be an exemption for Educational and Certification Testing (e.g. Nursing Testing and Dental Assisting testing and certification administered by third party) and Accreditation Services as there is only one accrediting body (Request from Bates Community College).	<p>Certification Testing - the following exemption has been added to the policy: "21) Educational and Certification Testing services when the entity providing the services is the only recognized authority."</p> <p>Accreditation Services the following exemption has been added to the policy: "22) Accreditation services when the entity providing the accreditation is the only recognized authority."</p>	
39	Streamline being able to renew a sole source contract	DES is open to streamlining the process so long as it complies with all statutory requirements.	
40	OEM maintenance should also include "Factory authorized Maintenance". Not all manufacturers provide (OEM) maintenance. Some manufacturers authorize specific companies to provide that maintenance and in the current rules is not allowed. (Curtis Lee – Pierce College)	If the manufacturer authorizes a company to exclusively provide maintenance in lieu of the OEM then it would be covered because it would be considered OEM maintenance. If the OEM authorizes more than one company to provide maintenance and the service can then be competed it would not qualify as OEM maintenance.	

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41	You often have to make modifications years later to have it modified or enhanced. Software originally purchase through this exemption there should also be an exemption to have it enhanced.	The intent of RCW 39.26 is to promote open competition and transparency for all contracts for goods and services entered into by state agencies. Creating a general exemption for enhancements can be construed too broadly to include acquisitions that could be competed. Agencies should work with DES when considering whether a software enhancement is a sole source contract. This process, which includes public notice, promotes the intent of the statute.	
42	3. OEM - It includes IT as well?	OEM includes IT equipment such as switches, servers, and routers.	
43	Issue where we try to buy from OEM and they don't sell it or they have a designated reseller – could this be included in the exemption?	If the manufacturer authorizes a company to exclusively provide maintenance in lieu of the OEM then it would be covered because it would be considered OEM maintenance. If the OEM authorizes more than one company to provide maintenance and the service can then be competed it would not qualify as OEM maintenance.	
44	#4 When you purchase software you often have enhancements/updates and they have to go through the proprietary owner	The intent of RCW 39.26 is to promote open competition and transparency for all contracts for goods and services entered into by state agencies. Creating a general exemption for enhancements can be construed too broadly to include acquisitions that could be competed. Agencies should work with DES when considering whether a software enhancement is a sole source contract. This process, which includes public notice, promotes the intent of the statute.	
45	SAAS is what we do now – exemption is dated. There is no way to buy licensing when you continue using the system.	A more limited exemption (#6) has been added to the revised policy: 6. Additional software/user licenses for solutions (e.g. SAAS) that were acquired through a competitive process, provided the additional licenses are equivalent in scope to the licenses that were included in the original purchase. Software license renewals are not exempt.	
46	Software as a Service is what we are purchasing and the policy is outdated for exemption #4. There may also be buying a license and then maintenance and support.	A more limited exemption (#6) has been added to the revised policy: 6. Additional software/user licenses for solutions (e.g. SAAS) that were acquired through a competitive process, provided the additional licenses are equivalent in scope to the licenses that were included in the original purchase. Software license renewals are not exempt.	

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47	It can be difficult to separate out the license purchase from the maintenance and support. The maintenance and support is exempt but then we have to competitively procure the license.	A more limited exemption (#6) has been added to the revised policy: 6. Additional software/user licenses for solutions (e.g. SAAS) that were acquired through a competitive process, provided the additional licenses are equivalent in scope to the licenses that were included in the original purchase. Software license renewals are not exempt.	
48	For equipment can only buy 12 month maintenance. With IT it is typically for 3 years – can't do by OFM rules.	This is correct. Changes to Section 85.32.50.b of the State Administrative & Accounting Manual require coordination with the Office of Financial Management.	
49	#8 - Definition for educational curriculum – subject to multiple interpretation	Educational curricula, in practice, should either be competed or the subject of a sole source filing. Because the exemption can be applied too broadly, it has been removed.	
50	# 8 Define educational curriculum	Educational curricula, in practice, should either be competed or the subject of a sole source filing. Because the exemption can be applied too broadly, it has been removed.	
51	Do NASPO contracts qualify as meeting the definition of a master contract?	No. However, certain NASPO ValuePoint contracts are approved by DES as cooperative contracts. DES is authorized to enter into cooperative contracts on behalf of the state under RCW 39.26.060. Once authorized, agencies may use the cooperative contracts as though they are master contracts.	
52	14. Should include internet also. Any entity that is regulated by the UTC.	The UTC has three areas of regulation: economic, safety, and quality. The UTC explains that its regulation of the internet is for quality and does not regulate prices related to this service. Therefore, internet services are not exempt from sole source requirements.	
53	The sole source policy sets out a number of exemptions, including a utility exemption. Can internet be added to the list of examples. (Marci Phillips – ATG)	The UTC has three areas of regulation: economic, safety, and quality. The UTC explains that its regulation of the internet is for quality and does not regulate prices related to this service. Therefore, internet services are not exempt from sole source requirements.	
54	15. Get hung-up on hotel cost/conference rooms provide clarification.	Hotels/conference rooms are not included in the exemption because in many cases there is more than one option available within an area.	
55	15 – professional development is broad like this event. Does it include opportunities for employee development?	Yes. The exemption includes opportunities for employee development.	
56	Should also take into account subscriptions. It is way out of date.	Exemption #19 is for placing advertisements or other communications using mass media. It is not for subscribing to those services.	

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57	<p>Sole Source Policy: please clarify whether an agency can make its own interpretations as to the meaning of the exemptions (section 9) OR please clarify the parameters of some of these exemptions. If an agency can make its own interpretations as to the parameters of these exemptions, these interpretations should not be unreasonably used against the agency in the risk assessment. (For example, DOH uses complex laboratory equipment which require the use of reagents for proper and accurate testing – these reagents should be considered “parts” of that equipment and be purchased as an exemption if from the OEM).</p>	<p>DES is the agency responsible for implementing procurement law by creating policies. If agencies need assistance with interpreting an exemption or the policy, DES is available to provide consultation.</p>	DOH
59	<p>Section 8 of the current policy reads: “Contract amendments will not need to be posted on WEBS or require a 10 business day public inspection period”. The materials sent out pursuant to today’s conversation, however, reads: “Section 8 (not shown) – Substantive amendments must be posted in WEBS.”</p>	<p>Amendments that are minor or administrative in nature do not have to be filed with DES. All other amendments must be filed. Amendments do not have to be posted in WEBS.</p>	
61	<p>Sole Source Policy, Exemptions # 8 Contracts related to educational curriculum. We need a better definition of “Curriculum” I understand that Curriculum means that a professor can pick any book they want to teach with. Does it also apply to the use of a specific manufacturer’s ultrasonic dental de-scaler because it is the industry standard for Washington dental hygienists. In this particular case this specific equipment must be used in the dental hygienist license certification process.</p>	<p>Educational curricula, in practice, should either be competed or the subject of a sole source filing. Because the exemption can be applied too broadly, it has been removed.</p>	
62	<p>FFAA has delegated authority for the following seven (7) facilities (Western State Hospital (WSH), Eastern State Hospital (ESH), Child Study & Treatment Center (CSTC), Special Commitment Center (SCC), Lakeland Village (LV), Rainier, and Fircrest). We would like to request the following exemptions be added or incorporated into Exemption 7 as follows:</p>	<p>Responses provided in entries 62a - 62d below.</p>	

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63	Why is the purchase or renewal of proprietary software licenses themselves not included in exemption #4?	A more limited exemption (#6) has been added to the revised policy: 6. Additional software/user licenses for solutions (e.g. SAAS) that were acquired through a competitive process, provided the additional licenses are equivalent in scope to the licenses that were included in the original purchase. Software license renewals are not exempt.	
64	To expand on the last question with regard to if SSCD has already approved a sole source for a vendor and a particular project why do we have to do a sole source again. I agree, as I have annual contracts that were approved and then have to be renewed each year. If nothing has changed other than a new term and maybe slight increase in cost, why do we have to resubmit every year.	Re-using a previous authorization does not meet the transparency requirements for sole source contract filings per RCW 39.26.140(1). Agencies can consult with DES when they present a sole source filing to ensure the contract period aligns with the agency's need for a multi-year contract.	
66	I think I heard something mentioned involving rejections from SSCD. This subject concerns me. Exposing the final contract to the vendor world compromises the sole source contractor should a SSCD decision reject the proposal and we'd have to go RFP.	The statute requires that sole source contracts be made available for public inspection. The intent is to validate that the contract is truly sole source and ensure transparency in the process.	
70	Please clarify...if it's sole source exempt do we have to bid it out, but not report it, or is the WHOLE thing exempt...meaning it does not have to be bid out?	The sole source exemptions are types of contracts that are exempt from the Sole Source Contracts Policy #DES-140-00, meaning that the contract would not have to be submitted and approved by DES, be made available for public inspection, nor posted on WEBS. The policy provides this clarity.	
76	Posting on agencies own website is duplicate work. DES is to develop a state sole source contract web page where all agencies can post sole source information. Procurement Reform was to standardize and have a one place to do business. DES as the authorizing procurement agency needs to have this option up and running for all agencies.	DES is exploring the possibility of developing a state sole source contracts web site.	

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81	<p><u>“please add”</u> “Software Maintenance and Support” 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. <u>“An Online Subscription that is used by the Licensor (proprietary owner) of software products as a means to deliver fixes, upgrades and the like to the software code or”</u> Technical services (support) may be included or sold as a separate offering by the Licensor and are covered under this exemption. This exemption does not include maintenance or support services provided by or through a third party.</p>	<p>DES has clarified Exemption #5 as follows: "Software maintenance and support services when procured from the proprietary owner of the software (Owner), or from the sole Owner-designated maintenance and support service provider. This exemption does not apply if there is more than one Owner-designated maintenance and support service provider." With this clarification the definition does not need to be changed.</p>	
88	<p>At a PAC meeting a question that came up is related to sole source amendments specifically from higher education. When Melanie Buechel created the training slides, her speaking notes state “If the original contract was not required to be filed because greater than 50% was non-state funds, the amendment(s) using state funds which would cause state funds to be greater than 50% of total contract – still not required to be filed - but use discretion and document decision.”</p>	<p>If the original contract was not required to be filed because greater than 50% was non-state funds, but an amendment would cause state funds to be greater than 50% of total overall contract, then the institution of higher education would file a new contract for sole source approval. This has been added to the Sole Source Frequently Asked Questions.</p>	<p>Purchasing Affairs Council</p>
89	<p>We have several licenses in place for software. I have been Informed that in order to renew those licenses I have to do a sole source for them since they are for renewal and not for maintenance and support. As such they don't meet the exemption criteria. A couple of the licenses are for mobile applications for iPhone and Android that are proprietary to the particular vendor we contract with to use the applications. Within the license there are service levels that provide technical support for our end users either by phone, website or e-mail, and annual maintenance fee.</p> <p>I'm asking particularly because several of our business units are looking at mobile apps as a way to assist our client base and want to be able to tell them what needs to be done when it comes time to renew the license for those apps. Can you please shed some light for me?</p>	<p>DES has clarified Exemption #5 as follows: "Software maintenance and support services when procured from the proprietary owner of the software (Owner), or from the sole Owner-designated maintenance and support service provider. This exemption does not apply if there is more than one Owner-designated maintenance and support service provider." With this clarification the definition does not need to be changed.</p>	<p>DSHS</p>

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95	Why does the agency have to include performance measures in its contract?	To help ensure agencies receive value through their contracting, RCW 39.26.180 (b) states"(3) To the extent practicable, agencies should enter into performance-based contracts. Performance-based contracts identify expected deliverables and performance measures or outcomes..."	DEL
36a	Can an exemption be added for Online database for specific information for hospitals? This is procured every year.	A general exemption for Online Databases for hospital information appears to be too broad as there are often opportunities for competition in this area.	
36b	Can there be some specific circumstances where we could do some other process for processing repetitive sole source for the long term?	DES is open to streamlining the process so long as it complies with all statutory requirements.	
62a	Death Investigations. When a Death Investigation is required it has to be done by an independent body. These contracts are coded as a Professional Service Contract and are subject to the direct buy limit. The problem is, we can't predict how many death investigations will be needed on an annual basis. The fee for this type of service is expensive and if one of our facilities has a higher number of deaths during the contract term, the \$10k amount is not sufficient.	Since this appears to be unique to DSHS, a general exemption would not be appropriate. However, DSHS could request an exemption to the policy.	
62b	Clinical Placement Firms. Our facilities previously received DES Approval to exempt clinical temporary placements (i.e., psychiatrists, RNs, physical therapists) as these types of placements are providing direct care to clients at our facilities and these facilities are not able to run effectively when staffing levels don't meet standards. We request that this be integrated into or made more clear that temporary services for clinical placements are part of Exemption 7.	A general exemption that would apply to all agencies would not be appropriate, as there are often opportunities for competition in this area.	
62c	Permanent Placements. The firms under DES Master Contract for Executive Placement Services does not specialize in Medical Placements. In addition, Western and Eastern State Hospital are reaching critical stage and is interested in an exemption to use staffing firms that specialize in permanent placement for Clinical Positions as well as Specialty Non Medical Positions such as Medical Director and/or Deputy Medical Director type Exemptions.	A general exemption that would apply to all agencies would not be appropriate, as there are often opportunities for competition in this area.	

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62d	<p>On-line Medical Subscriptions. These types of subscriptions are specific to the medical industry with regard to clinical diagnosis and medication and is used as a tool to properly treat and diagnose patients. There are two (2) used that are considered the industry standard in which the pharmacy schools train their pharmacists. We request that on-line medical subscriptions be integrated as part of Exemption 7 or request a permanent exemption for the two (2) industry standard subscriptions.</p>	<p>In the past, DES has approved DSHS' sole source filings for on-line subscriptions for clinical diagnosis and medication treatment. Broadening this exemption to include all on-line medical subscriptions would not be appropriate, as there are often opportunities for competition in this area.</p>	
65a	<p>If a sole source has been approved it should be good for "several" purchases of the <u>exact same item/service</u> for a defined period of time – maybe two years? Of course, add a caveat regarding change in circumstances.</p>	<p>Re-using a previous authorization does not meet the transparency requirements for sole source contract filings per RCW 39.26.140(1).</p>	
65b	<p>Perhaps a way to utilize the sole source database to allow a previous authorization to be "re-used" – kind like of amendment to the sole source. If the sole source data could be summarized annually and reported and be made available to vendors perhaps it would help some businesses decide if they want to enter into a new business area.</p>	<p>Re-using a previous authorization does not meet the transparency requirements for sole source contract filings per RCW 39.26.140(1).</p>	
65c	<p>Qualifications should be considered as a possible "sole source" parameter as long as the qualifications are reasonable – ensure that any "reasonable" qualifications are listed on the WEBS posted notices. Then if agencies are being too "unreasonable" -- maybe the stated qualification requirement could be appealed. Could be one of the audit items in the risk analysis done for delegation authority.</p>	<p>Agencies that submit a sole source filing are already requested to provide contractor qualifications. Part of the Sole Source Criteria includes the following question: "Describe the unique features, qualifications, abilities or expertise of the contractor proposed for this sole source contract." Including these qualifications in the WEBS notification may be advisable when relevant.</p>	
65d	<p>DES should be required to meet a deadline if the file is complete. If deadline not met DES should notify department/agency. DES is there to help not hinder.</p>	<p>DES will provide a decision on an agency request for sole source within 10 working days after the contract is provided to DES. In determining whether to approve a sole source contract filing, DES will review all information submitted including vendor challenges and the agency response. Note: the number and complexity of requests received by DES can impact DES's processing time. This language has been added to the Sole Source Procedure.</p>	

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65e	Better definitions or guidelines regarding 39.26.125 be available so that items that really do not need to be competed are better outlined in the exemptions to the sole source policy/guidelines. Maybe items that do not require competition are provided in a guideline document and referred to in the sole source policy.	DES has incorporated this idea as Exemption #2 in the revised policy.	
65f	Sole source exemption – add: when a distributor has a sole source distribution area or is the only authorized reseller of the manufacturer be included in #3 – of course, this is only after the original purchase from the equipment manufacturer was either properly competitively bid or an approved sole source.	If the manufacturer authorizes a company to exclusively provide maintenance or parts in lieu of the OEM then it would be covered. If the OEM authorizes more than one company to provide maintenance or parts within a distribution area and the service can be competed, it would not be exempt. DES has made changes to Section 9, Exemption 3 of the policy.	
65g	In Public Works contracts many times certain standards are required in many areas of the buildings, such as hardware, door, alarms, HVAC – however, once they become the standard then this really limits competition later in the process. Something should be added to the PW process that allows for competitively bid items to become standards for an agency, or University – something along the lines that if a standard is to be set in PW contracts there is a way to allow competition for these items. So many of these are MRO and the items continually get replaced and this would be an area that could increase small business and minority participation.	This information has been provided to the DES Engineering & Architecture Services Division, who manage the Public Works process.	
67a	Section 2 of the policy - strike the paragraph regarding the state's vendor web site and add the phrase "At minimum on WEBS" to section 2(3).	The statute requires posting in the state's enterprise vendor registration and bid notification system (currently the Washington Electronic Business Solution (WEBS)). The new Section 2(2) provides clarification regarding WEBS posting.	
67b	Also, amend the citation in section 3(1) to 39.26.010(23)	Revision made.	
68a	Section 7. What is the target date by which DES expects to have the new website for state sole source contracts web page? Is it before this policy would be live?	DES is exploring the possibility of developing a state sole source contracts web site.	

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68b	<p>Section 11. Current sentence: <u>“Agencies should confer with their assigned OCIO consultant.” Suggested replacement: “Agencies should confer with the OCIO and confirm if OCIO approval is required prior to contract signature and purchase. Contact the OCIO by sending email to the ociodlconsultants@ocio.wa.gov”</u></p>	<p>DES has provided the following clarification in the revised Policy Section 7: "All applicable information technology (IT) related sole source contracts must also conform to OCIO Policy #121. Agencies should confer with the OCIO and confirm if OCIO approval is required. Similarly, DES will be available to answer the agencies' IT sole source contract questions."</p>	
68c	<p>Section 11. This section says, “DES will also be available to assist where the Delegated authority policy uses the term “DES IT Liaison”</p>	<p>The reference to DES in both the revised draft of the Delegation of Authority Policy and the revised draft of the Sole Source Policy have been made consistent to remove the reference to the DES IT Liaison.</p>	
69a	<p>Section 8) DES Sole Source Contract Amendment Approval Define “minor or technical in nature” or give examples</p>	<p>This comment identifies an ambiguity in the policy. To further clarify this section of the policy, we have changed "technical" to "administrative"; and added the following language to the DES Procurement Policy Glossary Supplement: "Minor or administrative changes means revisions to the terms of a contract that do not affect the substantive rights of any party to that contract, such as a contractor's address change, etc. Changes to contract performance or compensation, etc. would be examples of substantive changes."</p>	
69b	<p>Section 9) Exemptions 5) what documentation is needed to show a provider is specifically required by a grant? Named in the application? In the budget? Both?</p>	<p>The documentation authorizing the grant would be needed to show a provider is specifically required. It could be in the form of a Budget Proviso, legislation, executive order, etc.</p>	
69c	<p>Section 9) Exemptions 6) Expert Witness – this section does not pertain to medical professionals? Only AAG or agencies. AAG or agencies would already be exempt under the interagency/interlocal exemption.</p>	<p>This exemption is for the Attorney General's Office or Agencies (e.g. Office of Administrative Hearings) that conduct adjudicative proceedings to contract with expert witnesses needed for such proceedings. Medical professionals may be included as expert witnesses. If the expert witness is employed by an agency covered under the Interlocal Act and the nature of the testimony has to do with the employee's job duties an interagency agreement may be the appropriate type of agreement. If the expert witness does not work for an agency covered under the Interlocal Act then an interagency agreement would not apply.</p>	
69d	<p>Sole Source FAQ's If DES does not provide a decision within 10 business days of the filing, does the sole source contract automatically become approved? Answer is no and that DES will notify the agency if more time is needed. This has happened to us a few times and we have never been notified.</p>	<p>DES receives notification from the Sole Source Contract Database when an agency files a sole source request. After filing, if an agency has not heard from DES within a reasonable amount of time, please contact DES to inquire about the status. DES works with agencies to provide timely responses to filings.</p>	

Feedback Number	Workshop Comments - General	Response	Commenter
71a	<p>The first is concerning the "late filing." I would like this concept removed. You already have the requirement that we cannot start a contract until we have DES' approval. A late filing has a negative connotation, especially when often we don't have much control over when to start the sole source process. It implies we are failing when we are actually doing the best we can with what time we are given to work with.</p>	<p>The statute is specific on the filing date. Any sole source contract that is filed less than 10 working days prior to the contract start date is considered late. However, agencies should consult with DES on late filings, to consider alternatives or to provide additional detail regarding the late filing circumstances, which can be part of the filing documentation.</p>	
71b	<p>The second concerns the filing of the amendment. I would like to have this requirement removed. What is the point, we have already established it is a sole source purchase. Most contracts are amended for more time and/or money, usually for reasonable amounts. Why have the agency re-justified the sole source and reason behind the amendment, and have a ten day waiting period for approval.</p>	<p>Amendments "that substantially change the scope of work of the original contract or substantially increase the value of the original contract" must be competed. RCW 39.26.120. Filing amendments with DES confirms that the amendment is within the scope of the approved sole source contract and need not be competed.</p>	
72a	<p>Although the policy seems to be complete, there are two comments related to the exemption section.</p> <p>Exemption 15 provides for contracts and procurements related to professional development. The scope of this exemption is not clear. Does the scope include training for "professional" credential and licenses, which includes certificates? Some medical personnel are not licensed or credentialed (e.g. first responders, emergency medical technicians and paramedics), but have certificates and continuing educational requirements. In addition, for information technology (IT) professionals, agencies include "online" training for random IT topics, which may or may not be coursework that is authorized to earn training credits for that specific IT certificate (e.g. a security specialist has various specialized certifications). Is this type of training included in the exemption?</p> <p>To clarify, the exemption could read: "Contracts and procurement related to professional development needed to maintain licenses, credentials or certifications. Examples include conferences, seminars, professional licenses and memberships, professional organizations and professional publications." In addition, does this exemption include online training for professional development?</p>	<p>The exemption is not limited to professional development needed to maintain licenses. Nor does not apply to training of staff, which is different from attending a conference or seminar. The difference is that, generally speaking, trainings can be competed. Attendance at a conference or seminar rarely is subject to competition.</p>	

Feedback Number	Workshop Comments - General	Response	Commenter
72b	<ul style="list-style-type: none"> • DES should explore adding an exemption for the installed-base of agency IT systems (and all its components -hardware/software) and/or an existing IT environment (platform/data center). When there is no master contract for the hardware/software that already exists in an IT environment or when the previous competitive procurement did not spell out additional "like" products and services that can be purchased (the older ones usually did not), an agency would need to do a competitive procurement despite the limited options, if any exist. For example, for statewide legacy systems, performing a competitive procurement for replacement or upgrade items is not practical for a number of possible reasons: <ul style="list-style-type: none"> * Compatibility with existing system/environment. * Efficiencies and timelines. * Cost-effectiveness/budgets. * Effect on the users, data or other technical issues. 	<p>The intent of RCW 39.26 is to promote open competition and transparency for all contracts for goods and services entered into by state agencies. Creating a general exemption for an IT installed base can be construed too broadly to include acquisitions that could be competed. Agencies should work with DES when considering whether a purchase for its IT installed base is a sole source contract. This process, which includes public notice, promotes the intent of the statute.</p>	

Feedback Number	Workshop Comments - General	Response	Commenter
73a	<p>1. In Section 3, 5, and 7 of the current policy there are requirements to prepare and post the sole source contract in advance of approval from DES.</p> <p>a. DES is requested to consider removing the requirement to prepare a sole source contract advance of DES approval to enter into a sole source contract. The time and effort to write and negotiate a contract with the proposed sole source vendor is wasted if approval is not given and the requirement must be competitively bid.</p> <p>b. Consideration should be given to proprietary or confidential information found in a contract that a vendor wishes to protect from public disclosure through a court injunction they are allowed to under the process</p> <p>c. DES should be able to review a sole source request with key information around the requirement without having to review and approve a pre-negotiated contract. Such information includes:</p> <ul style="list-style-type: none"> i. Proposed Term of Contract including proposed extensions ii. Proposed Cost of Work iii. Proposed Statement of Work (although there are concerns here as stated in 1b. regarding public disclosure) iv. Full contract if on Vendor paper 	<p>1a. The statute requires that sole source contracts be made available for public inspection. The intent is to validate that the contract is truly sole source and ensure transparency in the process.</p> <p>1b. If an agency has a concern about posting a sole source contract that contains proprietary or confidential information, the agency should consult with DES to determine if an exemption to the posting requirement is appropriate.</p> <p>1c. DES reviews the draft contract to provide information regarding the validity of the sole source, to confirm that the contract description aligns with the sole source justification/notice, and that the contract content accurately protects the state's interests.</p>	
73b	<p>2. In Section 3 of the current policy the reference to the RCW needs to be corrected and clarification is sought:</p> <p>a. Update the RCW reference for the sole source definition to 39.26.010 (23)</p> <p>b. Per the definition, provide clarification as to what is intended by the term "the only practicable source."</p>	<p>a. Revision to the RCW reference made.</p> <p>b. Determining "the only practicable source" is a business decision that agencies undertake as they are justifying a sole source. Factors that may be considered include past performance, cost-effectiveness (learning curve), and/or follow-up nature of the required goods and/or services. Past performance alone does not provide adequate justification for a sole source contract. Time constraints may be considered as a contributing factor in a sole source justification however will not be on its own a sufficient justification.</p>	

Feedback Number	Workshop Comments - General	Response	Commenter
73c	<p>3. In Section 7 of the current policy remove the requirement to “make sole source contracts available for public inspection.” This requirement should be removed or modified as follows:</p> <p>a. Use only WEBS. This is the portal for notifying the vendor community of opportunity</p> <p>b. If public inspection is still required then a single portal should be provided rather than forcing the public to go to individual agency web sites.</p> <p>c. If public inspection is still required then the posting time should be consistent with the posting time in WEBS.</p> <p>d. If public inspection is still required then only contracts that have been approved should be posted after contract execution (redacted if allowed by injunction)</p>	<p>The reason that the notice must be posted in both the agency website and in WEBS is that the agency posting is for public inspection, whereas the WEBS posting is for vendors. The public does not have access to WEBS.</p> <p>DES is exploring the possibility of developing a state sole source contracts web site.</p> <p>The statute requires that sole source contracts be made available for public inspection prior to execution. The intent is to validate that the contract is truly sole source and ensure transparency in the process.</p>	
73d	<p>Exemption 1; are NASPO contracts true master contracts as per the definition found in RCW 39.26.010 (15)?</p> <p>i. NASPO agreements are not “solicited and established by the department” – they are only agreed to through participating agreement</p>	<p>NASPO contracts are considered Cooperative Contracts under 39.26.060. Additional language will be added to the policy to clarify the exemption applies to DES Approved Cooperative Contracts</p>	
73e	<p>b. Exemption 3; can a sole authorized Value Added Resellers (VAR) or sole area reseller be included in the exemption?</p>	<p>If the manufacturer authorizes a company to exclusively provide maintenance or parts in lieu of the OEM then it would be covered. If the OEM authorizes more than one company to provide maintenance or parts within a distribution area and the service can be competed, it would not be exempt. DES has made changes to Section 9, Exemption 3 of the policy.</p>	
73f	<p>c. Exemption 4; can a sole authorized Value Added Resellers (VAR) or sole area reseller be included in the exemption?</p>	<p>Yes. Exemption #4 (now #5) has been amended to include "the sole Owner-designated maintenance and support service provider."</p>	
73g	<p>d. Exemption 4; can software licenses when being purchased from the proprietary owner be included in this exemption?</p>	<p>A more limited exemption (#6) has been added to the revised policy: 6. Additional software/user licenses for solutions (e.g. SAAS) that were acquired through a competitive process, provided the additional licenses are equivalent in scope to the licenses that were included in the original purchase. Software license renewals are not exempt.</p>	
73h	<p>e. Exemption 8; does this exemption apply to higher education only?</p> <p>i. I understand the term curriculum refers to the lessons and academic content taught in a school or in a specific course or program to include materials provided by a Vendor teaching on a specific course of study. Examples include AASHTO, NIGP, Franklin Covey, Practical Solutions, Strength Finders, etc.</p>	<p>Educational curricula, in practice, should either be competed or the subject of a sole source filing. Because the exemption can be applied too broadly, it has been removed.</p>	

Feedback Number	Workshop Comments - General	Response	Commenter
74a	<p>DSHS is requesting additional language be added to the existing Amendment section or creating an additional section for contract renewals, this new section would be similar to the Amendment section language.</p> <p>If there is an approved Sole Source filing for a vendor for a particular good and/or service, why do we have to file a new sole source when it is a renewal of the same good and/or service? We should be able to reference a previous filing as a renewal for the following year. Any renewals should not require posting to WEBS or require a 10 business day public inspection period, similar to the DES Sole Source Contract Amendment Approval process (#8). Agencies would still need to file the sole source contract renewal, reference the prior approved SSCD filing and will need to receive prior approval from DES before execution.</p>	<p>DES interprets renewals in this context to be new sole source contracts as opposed to amendments to existing sole source contracts. New sole source contracts must meet the transparency requirements per RCW 39.26.140(1).</p>	DSHS
74b	<p>DSHS is requesting clarification on a statement made during the first part of this session.</p> <p>At the beginning of the Sole Source session, Drew explained that the group from DES determines exemptions by “reviewing a common theme” and “reviewing what agencies file annually, every year.”</p> <p>The medical database subscriptions that are necessary for the medical staff to treat patients at Western State Hospital (WSH) and Eastern State Hospital (ESH), which meet a common theme, as they have been ongoing subscriptions for many years and there are no anticipated changes to the subscriptions.</p> <p>These agreements do not change very much or at all, every year, just the dates and amounts.</p> <p>DSHS would like to have these types of subscriptions added to a permanent exemption so DSHS does not have to refile these year after year as some have been in place for more than 27 years.</p>	<p>A general exemption for medical subscriptions could be too broadly construed to include medical subscriptions that could be competed. Since this appears to be unique to DSHS, a general exemption would not be appropriate. DSHS could request an exemption to the policy.</p>	DSHS
74c	<p>Exemption #3: Current: Original equipment manufacturer (OEM) maintenance service contracts and parts purchases when procured directly from the OEM.</p> <p>o Recommended Changes: Original equipment manufacturer (OEM) maintenance service contracts and parts purchases when procured directly from the OEM or an OEM authorized reseller.</p>	<p>Change exemption to: Original equipment manufacturer (OEM) maintenance service contracts and parts purchases when procured directly from the OEM or an exclusive OEM authorized reseller. This exemption does not apply if there is more than one authorized reseller within a distribution or service area.</p>	

Feedback Number	Workshop Comments - General	Response	Commenter
74d	<p>Exemption #4: Current: 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.</p> <p>o Recommended Changes: Software license, maintenance and support services when procured from the proprietary owner of the software. The procurement of software license, maintenance and support from third party vendors is not exempt from this policy.</p>	<p>A more limited exemption (#6) has been added to the revised policy: 6. Additional software/user licenses for solutions (e.g. SAAS) that were acquired through a competitive process, provided the additional licenses are equivalent in scope to the licenses that were included in the original purchase. Software license renewals are not exempt.</p>	
74e	<p>Exemption #14: Current: Utilities such as garbage, heat, sewer, cable television, power, water, fire protection and recycle services.</p> <p>Recommended Changes: Utilities such as garbage, heat, sewer, cable television, internet services, power, water, fire protection and recycle services.</p>	<p>The UTC has three areas of regulation: economic, safety, and quality. The UTC explains that its regulation of the internet is for quality and does not regulate prices related to this service. Therefore, internet services are not exempt from sole source requirements.</p>	
77a	<p>Section 9) Exemptions: What about Exceptions RCW 39.26.125? Trying to teach new staff the trade creates confusion between and exemptions vs. exceptions. The exception list sits in statute and is not mentioned in the policy. Some of the exemptions are also exceptions, but not all.</p>	<p>Exceptions to the competitive solicitation requirement listed in the statute have caused confusion because of the interaction between the statutory exceptions and the policy exemptions were not clear. Some exceptions were listed in the policy and others were not. Because of this we deleted the reference to: Direct Buy in Exemption #1; expert witnesses in Exemption #6; collaborative research in Exemption #10, Interagency Agreement in Exemption #11; and banking contracts listed in Exemption #12.</p> <p>The following language has been added to the policy Section 9.2 "Exceptions to the competitive solicitation requirement, listed under RCW 39.26.125."</p>	
77b	<p>[One suggestion is for another policy/practice:] Either a procurement is competed or it is something else. There should be another policy for the something else. Example is; "I don't go to the Sole Source policy to determine that I have a Direct Buy procurement."</p> <p>To determine what type of procurement it is one must ask four basic things:</p> <ul style="list-style-type: none"> · What are the services? · How much is it? · How long of term? · Whom do you know that may do this work? <p>Then proceed to policies</p>	<p>Thank you for this suggestion, which is a topic DES has identified as a potential future policy or procedure.</p>	

Feedback Number	Workshop Comments - General	Response	Commenter
77c	[Exemption] 1) Qualified Master Contracts does not include NASPO by the dept.	DES-approved NASPO contracts are considered DES-approved Cooperative Contracts under 39.26.060. Additional language has been added to Section 5.1 of the policy to clarify the exemption applies to DES-approved Cooperative Contracts	
77d	[Exemption] 4) should be revised to include software modifications and/or enhancements in the sole source exemptions as follows: 4) Software <u>enhancements, modifications, maintenance and/or</u> support services when procured from the proprietary owner of the software. The procurement of <u>software enhancements, modifications, maintenance and/or</u> support from third party vendors is not exempt from this policy.	The intent of RCW 39.26 is to promote open competition and transparency for all contracts for goods and services entered into by state agencies. Creating a general exemption for enhancements can be construed too broadly to include acquisitions that could be competed. Agencies should work with DES when considering whether a software enhancement is a sole source contract. This process, which includes public notice, promotes the intent of the statute.	
77e	[Exemption] 8) Better define or describe, "Educational Curriculum."	Educational curricula, in practice, should either be competed or the subject of a sole source filing. Because the exemption can be applied too broadly, it has been removed.	
77f	[Exemption] 14) Include internet, telephony, voice override. Add Utilities and Trade Commission.	The UTC has three areas of regulation: economic, safety, and quality. The UTC explains that its regulation of the internet and other telecom-related services are for quality and does not regulate prices related to this services. Therefore, these services are not exempt from sole source requirements.	
77g	[Exemption] 15) Professional Development needs defined. Add Hotel, conferences, Reservations.	Professional development refers to goods and/or services that enhance an employees' performance and/or career development. Hotels/conference rooms are not included in the exemption because in many cases there is more than one option available within an area.	
77h	Section 13) Definitions: "Software enhancements, modifications, maintenance and/or support" means services provided by a Licensor (proprietary owner) of software products to Licensee including, but not limited to, <u>changes, enhancements, fixes, upgrades and the like to the software code or program</u> . Technical services (support) may be included or sold as a separate offering by the Licensor and are covered under this exemption. This exemption does not include maintenance or support services provided by or through a third party.	The intent of RCW 39.26 is to promote open competition and transparency for all contracts for goods and services entered into by state agencies. Creating a general exemption for enhancements can be construed too broadly to include acquisitions that could be competed. Agencies should work with DES when considering whether a software enhancement is a sole source contract. This process, which includes public notice, promotes the intent of the statute.	

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78a	We added guidelines and standards - this is where the detail resides – Standards we have to comply with. Guidelines best practice which you could expand to your risk review on delegation.	Thank you for this feedback on how your agency has drafted its policies, guidelines and standards.	DOR
78b	Consider clarifying that a “contract” includes purchases/procurements done with a PO or VO, as well as those that involve a formal contract document (if that is the case and intent of this policy).	“Sole source contract” refers to a category of instruments used for sole source acquisitions. It can be in the form of a contract, purchase order, field order, etc. This definition has been added to the Sole Source FAQs (#5).	DOR
78c	It’s unclear to me what is gained by having DES have to approve the contract as well as the sole source situation. Agencies could still submit the draft contract with the sole source request, and even the final contract once it’s fully negotiated. Perhaps the processing time for sole source requests could be reduced if approval of the contract was taken out of the equation. Efficiency would be gained if the requesting agency could obtain the DES decision before going through the full contract negotiation process.	DES reviews the draft contract to provide information regarding the validity of the sole source, to confirm that the contract description aligns with the sole source justification/notice, and that the contract content accurately protects the state's interests.	DOR
78d	Consider publishing this info with the policy so it’s easy to see before starting the online filing process.	This information has been available at the DES web site and may be accessed by cutting and pasting the following URL into your web browser: https://des.wa.gov/sites/default/files/public/documents/ContractingPurchasing/templates/SSCD_justification_templates/Sole_Source_Contract_Justification_Template.docx?=403ca	DOR
78e-i	Consider using wording in the policy that is more clear, and different than the statute. The way the statute states the it “...not less than 10 working days prior to the contract start date.” Is confusing and allows the assumption that the 10 days is all that is needed. Consider something like: Agencies should submit the sole source filing to DES as soon as possible. Agencies must wait for the DES decision before the contract becomes binding, services are performed, or goods are received. DES strives to process and issue a decision on sole source requests within [x] working days, however, the number and complexity of requests can impact the processing time.	DES will provide a decision on an agency request for sole source within 10 working days after the contract is provided to DES. In determining whether to approve a sole source contract filing, DES will review all information submitted including vendor challenges and the agency response. Note: the number and complexity of requests received by DES can impact DES’s processing time. This language has been added to the Sole Source Procedure.	

Feedback Number	Workshop Comments - General	Response	Commenter
78f	Is DES working on one place where all agencies can post their sole source notifications? How about making this part of the SSCD and creating a vendor view for that part of the information only?	DES is exploring the possibility of developing a state sole source contracts web site.	DOR
78g	<p>Consider removing the requirement that amendments also be filed with DES.</p> <p>Any amendment should be within the scope of the contract, so removing this workload may help overall with the processing of requests.</p> <p>If left in, consider further defining what is a "minor or technical" amendment.</p>	<p>DES maintains a complete record of sole source contracts which includes substantive amendments. DES reviews amendments to make sure the amendment is within the scope of the sole source contract.</p> <p>To further clarify this section of the policy, we have changed "technical" to "administrative"; and added the following language to the DES Procurement Policy Glossary Supplement: "Minor or administrative changes means revisions to the terms of a contract that do not affect the substantive rights of any party to that contract, such as a contractor's address change, etc. Changes to contract performance or compensation, etc. would be examples of substantive changes."</p>	DOR
78h	Remove those items that are already exceptions or exemptions clearly stated in statute.	This change has been made. See Policy, paragraph 5 (Exemptions).	DOR
78h-i	<ul style="list-style-type: none"> Consider allowing both the original license, as well as maint/support, to be purchased from the proprietary owner. It is very difficult to separate the purchase of these 2 things, and if maint/support isn't purchased at the same time as the license, there is usually a significant, additional fee to add maint/support later (or we have to pay for a full license again along with the maint/support). 	<p>A more limited exemption (#6) has been added to the revised policy:</p> <p>6. Additional software/user licenses for solutions (e.g. SAAS) that were acquired through a competitive process, provided the additional licenses are equivalent in scope to the licenses that were included in the original purchase. Software license renewals are not exempt.</p>	DOR
78-hii	<ul style="list-style-type: none"> In SaaS situations, there usually isn't a separation of the license from maint/support. 	<p>A more limited exemption (#6) has been added to the revised policy:</p> <p>6. Additional software/user licenses for solutions (e.g. SAAS) that were acquired through a competitive process, provided the additional licenses are equivalent in scope to the licenses that were included in the original purchase. Software license renewals are not exempt.</p>	DOR
78-hiii	Also, a lot of proprietary software owners only allow their software to be sold by resellers that they certify. And some have different certification levels of their resellers, with each level being allowed to provide different expertise levels re the product. It can be extremely difficult to conduct a competitive procurement in these situations. Consider an exemption for purchasing from a certified reseller also.	Creating a general exemption for certified resellers with different certification levels would include acquisitions that could likely be competed. Agencies should work with DES when considering whether a purchase from a certified reseller is a sole source contract.	DOR

Feedback Number	Workshop Comments - General	Response	Commenter
78-i	To help provide clarity, consider adding a policy re competitive solicitations, and explaining there those items exempted/excepted from competition. This would allow this policy to focus on those things that we'd normally have to file a sole source request for unless they are included in the exemption list.	Thank you for the suggestion. DES' Enterprise Procurement Policy Team has a Competitive Solicitations Policy in our queue for development in the future.	DOR
79a	...all agency sole source contract must... It's unclear how many days DES has to respond to agency requests. Suggest adding language clarifying DES' response time to agency requests and incorporating a time commitment for response. Allowing DES' commitment time open-ended does not allow for proper planning of sole source procurements.	DES will provide a decision on an agency request for sole source within 10 working days after the contract is provided to DES. In determining whether to approve a sole source contract filing, DES will review all information submitted including vendor challenges and the agency response. Note: the number and complexity of requests received by DES can impact DES's processing time. This language has been added to the Sole Source Procedure.	DNR
79b	Validate that the proposed contract meets the sole source definition in RCW 39.26.010(24). Incorrect RCW cited. Suggest updating RCW to 39.26.010(23).	Revision to the RCW reference made.	DNR
79c	...DES will be working on developing a state sole source contracts web page... Request DES commitment. Request that DES create the web page and update the policy accordingly.	DES is exploring the possibility of developing a state sole source contracts web site.	DNR
79d	Needs expanded to accommodate up-to-date procurement practices. Include Washington grown food as an exemption.	Food is an exception to the competitive solicitation requirement, therefore the following language has been added to the policy in paragraph 5.2, which states: "Exceptions to the competitive solicitation requirement, listed under RCW 39.26.125."	DNR
79e	Needs expanded to accommodate up-to-date procurement practices. Include Governor's Executive Orders as an allowable exemption.	Currently there is insufficient information to support inclusion of this exemption in the policy.	DNR
79f	Needs expanded to accommodate up-to-date procurement practices. Include diversity exemption of up to one hundred thousand dollars.	Currently, the Direct Buy policy includes the diversity spend limit as a part of the definition of Small Business. The Direct Buy policy is currently under review.	DNR

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79g	<p>Definitions - Software Maintenance and Support Needs expanded to accommodate up-to-date procurement practices. In addition to the maintenance and support, include licenses and enhancements/updates as well.</p>	<p>In regards to enhancements: The intent of RCW 39.26 is to promote open competition and transparency for all contracts for goods and services entered into by state agencies. Creating a general exemption for enhancements can be construed too broadly to include acquisitions that could be competed. Agencies should work with DES when considering whether a software enhancement is a sole source contract. This process, which includes public notice, promotes the intent of the statute.</p> <p>A more limited exemption (#6) has been added to the revised policy: 6. Additional software/user licenses for solutions (e.g. SAAS) that were acquired through a competitive process, provided the additional licenses are equivalent in scope to the licenses that were included in the original purchase. Software license renewals are not exempt.</p>	DNR
79h	<p>Exemption - Original equipment manufacturer (OEM) maintenance service contracts and parts purchases when procured directly from the OEM. Needs expanded to accommodate up-to-date procurement practices. In addition to the OEM, add approval of an authorized agent.</p>	<p>If the manufacturer authorizes a company to exclusively provide maintenance or parts in lieu of the OEM then it would be covered. If the OEM authorizes more than one company to provide maintenance or parts within a distribution area and the service can be competed, it would not be exempt. DES has made changes to Section 9, Exemption 3 of the policy.</p>	DNR

Feedback Number	Workshop Comments - General	Response	Commenter
79i	<p>Exemption - 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.</p> <p>Needs expanded to accommodate up-to-date procurement practices. In addition to the maintenance and support, include licenses and enhancements/updates as well.</p>	<p>In regards to enhancements: The intent of RCW 39.26 is to promote open competition and transparency for all contracts for goods and services entered into by state agencies. Creating a general exemption for enhancements can be construed too broadly to include acquisitions that could be competed. Agencies should work with DES when considering whether a software enhancement is a sole source contract. This process, which includes public notice, promotes the intent of the statute.</p> <p>A more limited exemption (#6) has been added to the revised policy: 6. Additional software/user licenses for solutions (e.g. SAAS) that were acquired through a competitive process, provided the additional licenses are equivalent in scope to the licenses that were included in the original purchase. Software license renewals are not exempt.</p>	DNR
80b	<p>Original equipment manufacturer (OEM) maintenance service contracts and parts purchases when procured directly from the OEM - add to current verbiage: this includes Licensing and Subscriptions agreements when provided by the proprietary Owner of the license or agreement.</p>	<p>A more limited exemption (#6) has been added to the revised policy: 6. Additional software/user licenses for solutions (e.g. SAAS) that were acquired through a competitive process, provided the additional licenses are equivalent in scope to the licenses that were included in the original purchase. Software license renewals are not exempt.</p>	DSHS
80c	<p>Contracts related to educational curriculum, - consider adding: <u>various or multiple media types may be use to comply with ADA...requirements.</u></p>	<p>A more limited exemption (#6) has been added to the revised policy: 6. Additional software/user licenses for solutions (e.g. SAAS) that were acquired through a competitive process, provided the additional licenses are equivalent in scope to the licenses that were included in the original purchase. Software license renewals are not exempt.</p>	
80e	<p>Agencies may request an exemption for a specific contract or a category of 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.</p> <p>Section 10 isn't totally clear. When are we required to request the exemption? Only if not using exemptions in section 9 subsections 1-20? Or when requesting the exemption under section 9? Or every time we want to uses an exception? Please clarify</p>	<p>Section 10 applies when an agency is requesting an exemption for a specific contract or a category of contracts that is not already exempted in Section 9. DES has added clarification language to Section 10.</p>	

Feedback Number	Workshop Comments - General	Response	Commenter
80f	If I can voice a preference: only when we are not using exemptions under section 9 subsections 1-20; Updated exemptions published semi-annually (twice a year)	Thank you for your feedback. If new exemptions are considered, DES will seek feedback from stakeholders and will provide an update if an exemption is added.	
82a	<p>Again, this one is subjective; will DES review it from a fair perspective? Or, will they continue to view these (and others) from a “if I like you today” kind of perspective? It seems like we have to answer questions from DES during the filing/approval (posting to SSCD) process that are relative to the procurement/contract. They’ve even required us to add language about them in Sole Source Amendments. I had one recently where they required me to add the following to an amendment, and at PEER Workgroup we discussed whether to add the language to our standard amendment template.</p> <p>Language required, discussed, and then subsequently added: DES Sole Source Approval: The provisions of Chapter 39.26 RCW require the agency to file this amendment to a sole source contract with the Department of Enterprise Services (DES) for approval. The effective date of this amendment is either upon DES approval of the amendment, the tenth (10th) working day after it is filed with DES, or as agreed between the parties, whichever is later.["]</p>	The purpose of the suggested language is to put the vendor on notice of the effective date of the amendment. This is a material term for sole source contracts and substantive amendments, and is designed to prevent work occurring before a contract/amendment becomes effective.	DSHS
82b	DSHS requests the addition of language clearly describing the procedure for filing amendments to contracts created prior to 2013 that were not originally filed and/or for filing contracts originally created under a special exemption that has expired at the time of filing.	If the original contract was not filed, then an agency would file a new contract for sole source approval. DES recognizes that there are circumstances which may require other solutions. Agencies should consult with DES in those instances.	DSHS
82c	2. DSHS requests the allowance of purchases from designated maintenance service providers in Exemption #3 related to OEM Maintenance Service Contracts when services directly from the OEM are not available in the state of Washington.	Change exemption to: Original equipment manufacturer (OEM) maintenance service contracts and parts purchases when procured directly from the OEM or an exclusive OEM authorized reseller. This exemption does not apply if there is more than one authorized reseller within a distribution or service area.	DSHS

Feedback Number	Workshop Comments - General	Response	Commenter
82d	3. DSHS requests the addition of license renewals to Exemption #4 related to software maintenance and support services when procured from the proprietary owner of the software. Software-as-a-service (SaaS) purchases do not allow for the separation of the license renewal costs and the maintenance and support costs.	A more limited exemption (#6) has been added to the revised policy: 6. Additional software/user licenses for solutions (e.g. SAAS) that were acquired through a competitive process, provided the additional licenses are equivalent in scope to the licenses that were included in the original purchase. Software license renewals are not exempt.	DSHS
82e	4. DSHS requests the addition of hotels and related services (ex. conference room rentals) to Exemption #15 related to professional development. In addition, DSHS asks that hotel and related services, even when not related to a professional development event, be provided a general exemption as long as the totals being charged stay within the total permissible per diem amounts for all participants.	In many situations, there is more than one option for hotels and related services. Adding this as an exemption would discourage competition where competition exists.	DSHS
82f	DSHS requests the creation of a published, searchable databank of questions received from Agencies and answers provided by DES regarding clarification on sole source policies and procedures.	The SSCD has this functionality. Agency SSCD Administrators currently have access to this data and have the ability to grant other agency staff access to this data. Agency SSCD Administrators can contact DES if they need assistance.	DSHS
82g	6. DSHS requests the ability to file repetitive contracts (contracts that are unable to be created under one single contract and require frequent identical filings) in the sole source database. Please include instructions/tips on how to use the copy feature on SSCD.	To copy the content of a filing, click on the filing summary tab of the pertinent filing. The center of the screen that appears has a hotlink called "Printer Friendly Version." Click on this phrase, and the printer friendly version will appear on your screen. This version contains all of the information supporting the filing (excluding attachments) in a format that may be copied into a WORD document.	DSHS
82h	7. DSHS requests additional clarification around the acceptable scope of sole source exemption #7.	The exemption is for "medical, surgical, and dental decisions made by medical professionals." The exemption applies whenever an agency needs to acquire a medical professional's opinion that is relevant to the agency's responsibilities.	DSHS
82i	8. DSHS asks that DES clarify whether there are any limitations or parameters that DES places on sole source exemption #15.	The intent of the exemption is to cover situations where competition does not exist. For example, professional licensing is generally issued by a single entity or membership to a professional organization is provided by a sole source - that organization. It is not meant to cover trainings where there are opportunities to compete.	DSHS

Feedback Number	Workshop Comments - General	Response	Commenter
82j	<p>9. DSHS asks that DES consider adding an exemption for services required to obtain or attain professional certifications or accreditations that are required to provide services to clients, patients or residents of state facilities. For example, there are a number of contracts required by The Joint Commission to achieve and maintain The Joint Commission hospital accreditations. Since Joint Commission accreditation is a requirement for federal funding from the Centers for Medicaid and Medicare Services, the contracts that must be entered into in order to obtain and maintain the accreditation are always required and there is never any real option to refrain from entering into the contract or for competing the contract.</p>	<p>Accreditation Services - the following exemption has been added to the policy: "22) Accreditation services when the entity providing the accreditation is the only recognized authority."</p>	DSHS
83a	<p>Many skip the SS process and post as a WEBS solicitation if it isn't going to be a repeat purchase. Why?</p> <ul style="list-style-type: none"> · Process is faster · Process is simpler · Process will identify if it has 1+ suppliers available · Don't have DES involved in the process 	<p>Thank you for this feedback. The Sole Source process is designed to provide transparency and public notice to a procedure that is an exception to the competitive procurement requirement.</p>	
83b	<p>Does NASPO contracts qualify as a master contract since they are not solicited by DES?</p>	<p>NASPO contracts are considered Cooperative Contracts under 39.26.060. Additional language will be added to the policy to clarify the exemption applies to DES Approved Cooperative Contracts</p>	
83c	<p>OEM equipment manufacturers</p> <ol style="list-style-type: none"> a. Does the OEM have to have a presence in the state, country? b. If the OEM doesn't have a presence in the state, a suggestion would be to include the licenses resellers. c. What is the OEM doesn't sell direct and has only a single seller and acknowledges it? 	<p>The location of the OEM is not a factor. If there is more than one licensed reseller then the exemption would not apply because it can be competed between resellers. We will add clarifying language to cover a single authorized reseller.</p>	

Feedback Number	Workshop Comments - General	Response	Commenter
83d	<p>OEM Software</p> <p>a. Suggestion to add the purchase of license renewals, additional licenses as staff/need increases</p> <p>b. Should include software products and service provided by OEM</p> <p>c. Should continue to include maintenance</p>	<p>a. With regard to licenses: A more limited exemption (#6) has been added to the revised policy: 6. Additional software/user licenses for solutions (e.g. SAAS) that were acquired through a competitive process, provided the additional licenses are equivalent in scope to the licenses that were included in the original purchase. Software license renewals are not exempt.</p> <p>b. Creating a general exemption for all software products and services provided by an OEM can be construed too broadly and could include acquisitions that could be competed. Agencies should work with DES when considering whether software products and services are a sole source contract.</p> <p>c. Maintenance remains an exemption.</p>	
83e	Define educational curriculum.	Educational curricula, in practice, should either be competed or the subject of a sole source filing. Because the exemption can be applied too broadly, it has been removed.	
83f	Suggestion to add internet, VOIP, telephony	The UTC has three areas of regulation: economic, safety, and quality. The UTC explains that its regulation of the internet and other telecom-related services are for quality and does not regulate prices related to this services. Therefore, these services are not exempt from sole source requirements.	
83g	Suggestion to include or add hotel reservations	Hotels/conference rooms are not included in the exemption because in many cases there is more than one option available within an area.	
83h	Suggestion: if a vendor can provide the total purchase of the product for 5% less than CI, we should have approval to purchase through the vendor to save tax payers additional expense (Best Buy/Value policy)	Agencies are required to purchase products and services provided by CI that are under master contracts but can apply to CI for an exemption. CI is the sole authority for granting such exemptions.	
83i	<p>Why not allow other agencies to utilize SSCD vendors for SS to reduce the steps?</p> <p>o The work was already done and approved.</p> <p>o Maybe establish a timeline (12 months?) to utilize previous SS purchase approvals</p>	Using the authorization obtained by other agencies does not meet the transparency requirements for sole source contract filings per RCW 39.26.140(1).	

Feedback Number	Workshop Comments - General	Response	Commenter
83j	<p>Have the ability to extend a SS purchase for more than 1 year past the initial term</p> <ul style="list-style-type: none"> o 1st initial term noting possible x# of terms to renew o Renewal options if terms remain the same (Noted: Prepayment for > 12months is against OFM) Example cited was HPE 3yr service agreements 	<p>The current sole source policy and process does not prohibit agencies to extend beyond the initial term. Provided the extension language is in the original contract and the WEBS posting, agencies can extend with a contract amendment. However, there may be other factors that prohibit extension options, which are outside of the Sole Source Policy revision scope.</p>	
84a	<p>As mentioned at the conference I'd like to see some flexibility for authorized retailers/resellers. Occasionally it's not possible to purchase from the OEM.</p>	<p>Change exemption to: Original equipment manufacturer (OEM) maintenance service contracts and parts purchases when procured directly from the OEM or an exclusive OEM authorized reseller. This exemption does not apply if there is more than one authorized reseller within a distribution or service area.</p>	DOC
84b	<p>I've been told by DES that this doesn't apply to curriculum development here at DOC, so I'd like to see some clarity to this. What exactly constitutes curriculum development to DES?</p>	<p>Educational curricula, in practice, should either be competed or the subject of a sole source filing. Because the exemption can be applied too broadly, it has been removed.</p>	DOC
84c	<p>What are the restraints on this?</p>	<p>This exemption may be used when a grant requires the grantee to use a specific vendor. In order for the exemption to apply, an agency cannot file a grant application naming a specific vendor without meeting the requirements of competition and transparency.</p>	DOC
84d	<p>DOC's purchasing group has asked whether this includes phone and internet.</p>	<p>The UTC has three areas of regulation: economic, safety, and quality. The UTC explains that its regulation of the internet and other telecom-related services are for quality and does not regulate prices related to this services. Therefore, these services are not exempt from sole source requirements.</p>	DOC
84e	<p>The exemption is not explicit that this is for 3rd party organized events only.</p>	<p>This clarification has been added to the policy: "1) Professional development obtained from a third party, such as conferences, seminars, professional license professional organization memberships, and professional publications."</p>	DOC
84f	<p>Seems to relate only to advertising, but not entirely clear.</p>	<p>Correct. Exemption #19 is for advertising.</p>	DOC
84g	<p>It would be great if we could get some consolidation on process. Currently we're required to post to three separate sites and ideally this could be streamlined into a single site. Maybe this would be part of One WA.</p>	<p>The reason that the notice must be posted in both the agency website and in WEBS is that the agency posting is for public inspection, whereas the WEBS posting is for vendors. The public does not have access to WEBS. The solution by OneWA could potentially resolve the need to post the notice in two locations.</p>	DOC

Feedback Number	Workshop Comments - General	Response	Commenter
84h	Maybe provide the option to submit an amendment as sole source even when the original agreement didn't go sole source. For example, if I go direct buy and end up exceeding the direct buy limit I'd like to have the ability to change it to a sole source if the contract meets sole source requirements.	If the original contract was not approved as a sole source, but has since changed and would now qualify as a sole source, then the agency would file a new contract for sole source approval. DES recognizes that there are circumstances, which may require other solutions. Agencies should consult with DES in those instances.	DOC
85a	Can the policy or procedure cite the sole source and amendment questions for ease of access?	This information has been available at the DES web site and may be accessed by cutting and pasting the following URL into your web browser: https://des.wa.gov/sites/default/files/public/documents/ContractingPurchasing/templates/SSCD_justification_templates/Sole_Source_Contract_Justification_Template.docx?=403ca	
85b	Can the rules under the enabling legislation section be simplified?	The rules under the enabling legislation section of the policy have been moved to various other sections of the policy to provide clarification.	
85c	Someone made the suggestion I really like to use language similar to "you can't start work until it's been approved by DES"	The appropriate language is : "The provisions of Chapter 39.26 RCW require the agency to file this sole source contract with the Department of Enterprise Services (DES) for approval. The effective date of this contract is upon DES approval of the contract, the tenth (10th) working day after it is filed with DES, or as agreed between the parties, whichever is later."	
86a	The policy needs a section/provision that grants great interpretative discretion to the covered agencies. End.	DES is the agency responsible for implementing procurement law by creating policies. A safe harbor provision is not necessary. If agencies need assistance, DES is available to provide any requested consultation.	Michael Maverick - DOH
86b	The policy needs a problem escalation procedure that details the formal process for resolving disputes. The process should be performed outside of the Enterprise Policy Team and allow for increasing levels of escalation. End.	DES' practice in these circumstances is to consult the DES Contracts & Procurement Assistant Director.	
86c	Supporting state agencies is DES' primary responsibility: If memory serves, the statute commands that while master contracts may be used by political subdivisions, the primary purpose of DES/Master Contracts is to serve the needs of state agencies. More and more, I'm hearing Master Contracts Specialists and C&P leaders say that that the master contract was structured in this way to accommodate the polysub. Polysubs are not DES's statutory responsibility, state-level agencies are the purpose and reason C&P and Master Contracts exists. End.	DES appreciates the feedback and notes that this feedback is outside the scope of this policy. This feedback has been provided to the DES Contracts & Procurement Team that manages the state master contracts for their review.	Michael Maverick - DOH

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86d	<p>While RCW 39.26 does give DES wide authority, I assert that RCW 39.26.140 is an intended limitation on the wider DES authority (it displaces other authority and occupies the field), otherwise, there would have been no need for a special Sole Source Contract section. RCW 39.26.140 have five elements: 1. Is it a single source of supply (or comparable argument), 2. Did the agency post a notice on WEBS, 3. Did the agency post a notice on its own external website, 4. Were there any credible capability challenges, and 5. Have all time limits run? The statutory provision DOES NOT grant to DES the authority to second-guess the content of the contract (keep in mind that the contract was the best that could be reasonable attained given there's no leverage with a sole source supplier). Customer agencies are appreciative of any advice, but DES needs to stop holding up a contract (stop pressuring and holding the contract hostage). IT was stated that the reason DES does this is because the DES Director is held to account. I hope that is rarity but in the end that's a burden of leadership that was accepted by the DES Director. It is the customer agency that bears legal responsibility (would get sued), it is the customer agency that has a Secretary or Director that was appointed by the Governor and actually bears the responsibility to carry out the mission. End.</p>	<p>DES' current practice is to review the draft contract to provide information regarding the validity of the sole source, to confirm that the contract description aligns with the sole source justification/notice, and that the contract content accurately protects the state's interests.</p>	Michael Maverick - DOH
86e	<p>These need to be updated in a meaningful way. I'm suggesting a separate set of workshops. I know that DES wants to get to done quickly but these five policies are important and are going to set a course in motion for years to come. It's worth taking more time to resolve. At issue is the "exemptions" need to include updates for annual SaaS solutions, licenses and better explained and give several right-use and wrong-use examples several such as, section 9, subsections: 5, 7, 12, 15, 19. End.</p>	<p>DES has addressed many of the issues/concerns raised here. DES will provide agencies another opportunity to provide feedback on the proposed changes to the sole source policy based on the first round of feedback. If additional time is needed DES will work with stakeholders to resolve such issues.</p>	
86f	<p>Disclosure of Summary from input: I would like to see and time to review the summarized input. Will this be made available? Please let me know. If it is not in the current timeline, I'd like to make a request for additional time to the C&P AD. End.</p>	<p>The goal of stakeholder review of the summarized input is to ensure DES accurately captured all feedback. DES will allow ample for review.</p>	Michael Maverick - DOH
86g	<p>Redline Document: During the workshop, someone asked if DES could provide a redline of the "substantive" differences from the current to the draft? I'm asking to go one step further, I'd like to see the difference from current to draft to draft stemming from workshop input. If it is not in the current timeline please let me know, I'd like to make a request for additional time to the C&P AD. End.</p>	<p>DES will mark up the current draft to reflect the changes made as a result of the workshop/e-mail input received; and will be provided to stakeholders for feedback.</p>	Michael Maverick - DOH

Feedback Number	Workshop Comments - General	Response	Commenter
86h	An appropriate amount of draft policy review time is needed: Once the new set of drafts are designed from the input, I really believe there needs to be an adequate amount of time for the customer agencies to review and if they are finding the draft to be a challenge, it will allow us to engage DES at a higher level. If this is not in the current timeline, please let me know and I will make a request for additional time to the C&P AD. End	DES will provide an adequate amount of time for review when there are substantive changes to a draft policy or a new policy is drafted.	Michael Maverick - DOH
87a	<p>1) Be submitted to DES (via SSCD), with supporting justification, not less than 10 working days prior to the contract start date.</p> <p>2) Be approved by DES before the contract becomes binding, services are performed and goods are received.</p> <p>3) Be made available for public inspection not less than 10 working days prior to the contract start date. (Should something be put here as to what this means by public inspection? Agency website, etc)</p> <p><u>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. Should this be bullet number 4 since it is talking about posting requirements?</u></p>	<p>The statute requires that contracts are made available for public inspection. This means the agency should post the contract on their website or they may post a notice on their website with instructions on how to obtain a copy of the contract. If agencies do not maintain a website, they must make other arrangements to make the contract publicly available. This is in addition to posting the contract to the state's enterprise vendor registration and bid notification system (WEBS), which is not available for general public inspection.</p> <p>The suggestion for "bullet number 4" was incorporated into the revised policy Sections 1 & 2.</p>	DES
87c	Is the sole source questionnaire posted somewhere so agencies can see the questions and can formulate a response before filing in the SSCD?	The sole source questions are available on the DES Website at : https://des.wa.gov/sites/default/files/public/documents/ContractingPurchasing/templates/SSCD_justification_templates/Sole_Source_Contract_Justification_Template.docx?9a84e	
87d	Is DES still developing a state sole source contracts web page (also, correct the typo - extra carriage return - in this section)?	DES is exploring the possibility of developing a state sole source contracts web site.	
87e	Need to define cooperative contracts.	Cooperative contracts are "purchasing agreements for the purchase of any goods or services with one or more states, state agencies, local governments, local government agencies, federal agencies, or tribes located in the state..." (See RCW 39.26.070).	

Feedback Number	Workshop Comment
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Farrell's Notes	If you have to provide the notice – why don't we just go out for bid? It takes a lot of time to respond to vendors who are not clearly qualified. Takes resources to do this.
Christine's Notes	They don't bother with sole source – shouldn't you just put it out for bid, considering that you are posting in WEBS and essentially getting bids.
Christine's Notes	Spending more time with posting on WEBS and responding to capability statements.
Farrell's Notes	Consider Sole Source when something has copyrights.
Farrell's Notes	Why must a copy of the contract be submitted when sole source hasn't been approved? May not be entering into the contract if the sole source is not approved.
Christine's Notes	Why does DES need the contract – this is a barrier for agencies to submit and if DES doesn't approve then it was a waste of time (Rick Naten – WSDOT). DES asked Rick to provide his input with suggested solutions by e-mail.
Farrell's Notes	Open POs often are sole source or seem sole source. I know what I am buying but not how many. Cannot provide a draft contract because it is an open purchase agreement. PO comes later. Timing is an issue.
Christine's Notes	Don't know the dollar value of the contract (blanket contract) and won't be able to draft a contract (Alex – Bates Technical College)
Farrell's Notes	#7 – Agency website requirement – will we ever get to the point where we are going to have one posting requirement?
Christine's Notes	Section 7 (Tammie Wilson – L&I) – If they are supposed to post on agency website and in WEBS. Are we ever only going to get to one posting requirement? Drew shared that this might be solved by OneWA.
Farrell's Notes	Community Colleges are going to all be using CTC Link – will One Washington take that over?

Farrell's Notes	DSHS – situation where a contract has changed and becomes a sole source which was not intended to be so initially. Need clarification in the policy.
Farrell's Notes	Would like to have access to the Sole Source Contracts Database (SSCD) so we can see what has been decided in the past. We would like to have access to a document bank so we can rely on past approvals as opposed to contacting the DSHS policy shop.
Farrell's Notes	We cannot amend sole source contracts that were never filed – or have been denied in the past. This includes contracts filed before 2013
Farrell's Notes	Need to understand what to do if we filed a contract late and now we want to amend it.
Farrell's Notes	Western State Hospital exemptions approved by the Director of DES were not required to be filed – what do we do when we want to amend some of those contracts?
Farrell's Notes	State Investment Board – splitting policy (Peabody) from procedure. This policy is a mixture of both. I split it for SIB staff.
Farrell's Notes	3 ways to achieve sole source. Sole source – single source of supply in purist form. Other situations single source of supply or only manufacture. Need to better explain what qualifies as a sole source.
Christine's Notes	The sole source policy doesn't do a good job of defining a sole source and would suggest defining what qualifies as a sole source (Michael Maverick – DOH)
Farrell's Notes	Create escalation process if there is a disagreement with the policy team.
Christine's Notes	Escalation process in policy when an agency has conflict with DES' decision (Michael Maverick – DOH)
Farrell's Notes	Certain language that needs to be included in the contract should be in the policy. Anything that could hold-up approval of the sole source process should be known to us.
Farrell's Notes	Why have language added to the contract about when the contract becomes effective and then we have to go back and negotiate with the vendor. Confusion created. Policy requires agency to do that so clause seems redundant to add to contract. Should this go into the legal posting instead of the contract?

Christine's Notes	Another issue around why the DES Approval language is required in contract before the approval process (Mark Gaffney – ECY). Suggested that it is a practice, but shouldn't be in the contract (Kathy – ECY). Should be in posting instead (suggested by Ann Polanco)
Farrell's Notes	Late filing – helpful to have more clarity. If you have already paid it is it a late filing?
Christine's Notes	More clarity on late filings (Ann Polanco)
Farrell's Notes	10 days – maybe changing the language to clarify what the statute really means not what it said. Please add clarity.
Christine's Notes	Re: 10 days. Suggested clarifying language in policy – be clear that the intent is that agencies don't start work until DES approves (restating the law language of 10 days is confusing)
Farrell's Notes	Many community colleges just post a formal bid on webs as opposed to going through sole source process or they are finding other funding sources so they can avoid the sole source process and push things through.
Farrell's Notes	In addition to the 10 days we spend 10 days before that to gather the information so may as well post it to WEBS and do a formal bid.
Farrell's Notes	At DSHS we do not do a solicitation instead of filing a sole source. There seems to be a time and work benefit to do the sole source.
Farrell's Notes	Would be helpful to have access to the sole source questions before going to the SSCD to begin a filing. This would allow us to begin working on the questions before we start the filing.
Christine's Notes	Site the sole source questions in the policy, so people can see and prepare for them.
Christine's Notes	The policy is designed more for sole source contracts and makes sole source purchases a little confusing because most of the language is around contracts. (Daniel Larson – DOC)
Christine's Notes	Can we build in a longer time for a sole source contract (i.e. 20 year – initial 2 year approval and an 18 year approval moving forward)
Christine's Notes	Streamline being able to renew a sole source contract
Email	Comment

Exemptions

Workshop	Comment
Christine's Notes	OEM maintenance should also include "Factory authorized Maintenance". Not all manufacturers
Farrell's Notes	4. Software Maintenance and Support services – is interrelated with number 3.
Farrell's Notes	You often have to make modifications years later to have it modified or enhanced. Software originally purchase through this exemption there should also be an exemption to have it enhanced.
Christine's Notes	#4 When you purchase software you often have enhancements/updates and they have to go through the proprietary owner
Farrell's Notes	SAAS is what we do now – exemption is dated. There is no way to buy licensing when you continue using the system.
Christine's Notes	Software as a Service is what we are purchasing and the policy is outdated for exemption #4. There may also be buying a license and then maintenance and support.
Farrell's Notes	It can be difficult to separate out the license purchase from the maintenance and support. The maintenance and support is exempt but then we have to competitively procure the license.
Farrell's Notes	3. OEM - It includes IT as well?
Farrell's Notes	Issue where we try to buy from OEM and they don't sell it or they have a designated reseller – could this be included in the exemption?
Farrell's Notes	14. Should include internet also. Any entity that is regulated by the UTC.
Christine's Notes	The sole source policy sets out a number of exemptions, including a utility exemption. Can internet be added to the list of examples. (Marci Phillips – ATG)
Farrell's Notes	A piece of test equipment that is only provided by one vendor – used for calibrating. Need more information to describe the scope of what is being addressed.
Farrell's Notes	Should add a Safe Harbor provision – customer agency will be given deference/discretion as to the interpretation unless grossly negligent.
Farrell's Notes	There is so much left to interpretation.

Farrell's Notes	Should better utilize the sole source contract database – what goes into the database and what information is kept. If DES has already cleared a sole source in the past why can't we use the authorization for others agencies moving forward.
Christine's Notes	Why can't we collect the sole source vendors in the database and agencies use that as justification, so they don't have to go through the approval process again.
Farrell's Notes	Can an exemption be added for Online database for specific information for hospitals? This is procured every year. Can there be some specific circumstances where we could do some other process for processing repetitive sole source for the long term?
Farrell's Notes	Should also take into account subscriptions. It is way out of date.
Christine's Notes	Update subscriptions exemptions
Farrell's Notes	15. Get hung-up on hotel cost/conference rooms provide clarification.
Christine's Notes	#15 – clarify that hotels and conference rooms are included.
Farrell's Notes	Having a database – can you possibly have a renewal process as opposed to posting, etc. (renew button) if nothing has changed?
Farrell's Notes	For equipment can only buy 12 month maintenance. With IT it is typically for 3 years – can't do by OFM rules.
Christine's Notes	OFM only allows maintenance contracts for 12 months, but their IT wants a 3 year contract.
Farrell's Notes	15 – professional development is broad like this event. Does it include opportunities for employee development?
Christine's Notes	Professional development is pretty broad
Farrell's Notes	There should be an exemption for Educational and Certification Testing (e.g. Nursing Testing and Dental Assisting testing and certification administered by third party) and Accreditation Services as there is only one accrediting body (Request from Bates Community College).
Christine's Notes	Recommendation for an exemption for educational certification testing.
Christine's Notes	#8 - Definition for educational curriculum – subject to multiple interpretation
Farrell's Notes	# 8 Define educational curriculum

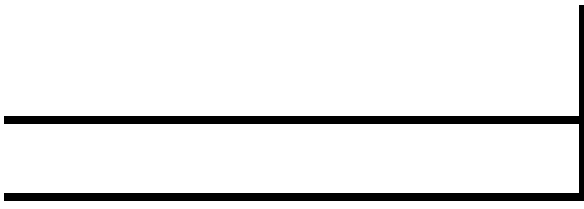
Farrell's Notes	#1 – definition master contracts – do NASPO agreements meet this requirements they are not solicited by the department.
Christine's Notes	Do NASPO contracts qualify as meeting the definition of a master contract?

Response	Type (1)	Type (2)	Draft Policy Section
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Answer: One option is that has been discussed is to post on DES's website. Other option may be solved by OneWashington.

Answer: We are definitely looking at making sure higher education and political subdivision have access to purchasing through OneWashington.

Comment – OFM rule is about paying in advance.



Feedback Number	Feedback to comments received through 2-28-2019	Response	Commenter
1	10 Day Public Posting: DES should work hard to provide a public repository for agency sole source contracts be posted for 10 day public inspection rather than requiring agencies to post on their own websites. It will be a convenience to the public to have one single location to view all current sole source postings. A DES managed site would also provide DES with the assurances they need that postings have been made for the full 10 days as required.	DES is currently exploring options for a public repository.	Rick Naten - WSDOT
2	SS Exemption #6: Clarify why software license renewals are not exempt. Does this mean that software license renewals must be approved annually through the SS Amendment approval process if they were procured as a sole source in the first place.?	The reason why software license renewals are not exempt is that agencies should take stock on a regular basis to determine if it makes sense to renew or even change their software tools. If a change is warranted, then a competitive process is appropriate. Amendments to sole source contracts must be filed through the SSCD and approved by DES.	Rick Naten - WSDOT
3	SS Exemption #12: Provide a definition for "seminar."	A form of academic instruction, either at an academic institution or offered by a commercial or professional organization.	Rick Naten - WSDOT
4	Contract Effective Date language: The suggested language for contracts/amendments found in the FAQ is confusing. Unless I am incorrect the bottom line is an agency cannot enter into a contract or an amendment without DES approval. Language should be drafted that clearly states that.	The language used in the FAQ is designed to cover all contingencies related to the effective date. Therefore, DES will continue to use the current language in the FAQ.	Rick Naten - WSDOT
5	Reference: Title "Sole Source Contract Policy" Comment: Other exemptions too?	Yes. Other exemptions are listed in the policy and there is a reference to "exempt from competition" in the <u>Reason for the Policy</u> section.	Heidi Whisman - DOR
6	Reference: "Reason for Policy" This policy applies whenever an agency intends to purchase or lease goods and/or services under Chapter 39.26 RCW that are only available from a single sole source as defined in RCW 39.26.010 (23) or are exempt from competition. Comments: I think it's important to state it this way because earlier in the sentence it says "is only available..." , but in reality, the statute definition of sole source is more broad than the good/service literally only being available from a single source. In real life, valid sole source situations often arise when technically there are multiple sources, but in reality there's only 1 of those that can meet the full need.	DES added the reference to the RCW.	Heidi Whisman - DOR
7	Reference: "Reason for Policy" This policy applies whenever an agency intends to purchase or lease goods and/or services under Chapter 39.26 RCW that are only available from a single sole source as defined in RCW 39.26.010 (23) or are exempt from competition. Comments: This part is confusing because the title of this policy only mentions Sole Source. Why would we have to follow everything in this policy if the procurement is already exempted from competition by 39.26.125 for some reason other than it being a sole source? If this is going to be about other exemptions to competitive procurements, the perhaps change the title to Exemptions from Competitive Procurements and Sole Source Contract Policy. It's always been very confusing when looking for information on exemptions in DES policies. The statue, RCW 39.26.125, talks about exemptions from competitive procurement, one of which is Sole Source contracts. I understand that DES may, by policy, make exceptions to what needs to file the Sole Source filing policy. I ask that you consider the wording carefully so it's easy for folks to find the guiding info they need in a particular situation.	If a solicitation is exempt from competition under RCW 39.26.125, there is no need to follow this policy.	Heidi Whisman - DOR
8	Reference: Section 1 It is the intent of the state to promote open competition and transparency for all contracts for goods and services. One exemption to competition is a sole source contract (RCW 39.36.125(2)). If an agency concludes that a sole source contract is justified and necessary, the agency must submit the sole source contract to the Department of Enterprise Services (DES) for approval (RCW 39.26.140(1)) unless otherwise exempted <u>by the Director (RCW 39.26.140(2))</u> . (See Section 5 of this Policy <u>for Sole Source exemptions</u>). Reference PRO-DES-140-00A (Sole Source Contract Approval Procedure).	DES has revised the policy to accept these suggested edits.	Heidi Whisman - DOR

Feedback Number	Feedback to comments received through 2-28-2019	Response	Commenter
9	Reference: Section 3 Title "Transparency for the public " Comments: Elsewhere, I think in the FAQ, it's discussed that WEBS is not a public notification/visible system. Therefore, I suggest pulling out from #3 the part about posting on WEBS and make it a separate numbered bullet. This will provide clarity as right now the WEBS part is kind of buried in this public part.	DES has re-titled the section to "Transparency" and remove the reference to the public.	Heidi Whisman - DOR
10	Reference Section 3 "Transparency for the public" An agency must make sole source contracts available for public inspection for a period of not less than 10 working days before the proposed starting date of the contract. An agency must also provide evidence to DES that it posted the contract opportunity for a minimum of five (5) working days on the State's enterprise vendor registration and bid notification system (known as Washington's Electronic Business Solution (WEBS)), RCW 39.26.140(1). See PRO-DES-140-00A (Sole Source Contract Approval Procedure). Comments: I see this as more of a procedural step and added some suggested revisions to the procedure.	DES feels this language is important to the policy, so it will remain in the policy. However, DES has added your suggestions to the Procedure document.	Heidi Whisman - DOR
11	Reference: Add a new Section 4 "Posting on the State's enterprise vendor registration and bid notification system" An agency must also post the contract opportunity for a minimum of five (5) working days on the State's enterprise vendor registration and bid notification system (known as Washington's Electronic Business Solution (WEBS)). RCW 39.26.140(1).	See Feedback #10	Heidi Whisman - DOR
12	Reference Section 4 "Sole source contract amendment approval" All sole source contract amendments must also be filed with DES in order to and receive prior approval prior to being effective , except when changes are minor or administrative in nature. Contract amendments do not need to be posted on WEBS and do not require a 10 working day public inspection period. See PRO-DES-140-00A (Sole Source Contract Approval Procedure).	DES has revised the policy to accept these suggested edits.	Heidi Whisman - DOR
13	Reference: Section 5 "Exemptions" preamble Certain types of contracts are exempt from competition and this Sole Source Contracts policy (also see RCW 39.26.125 for additional exceptions to Competitive Solicitation): Comments: I don't think competition should be mentioned here as this policy seems to be only about sole source (see earlier comment). Also, status covers other things that are exempt from competition but that are separate from Sole Source stuff. Perhaps what would help is another policy that covers what is exempt from Competition, but is not something that takes the thought process first to Sole Source.	The policy currently includes both types of exemptions. Those exempt from competition and those exempt from the policy.	Heidi Whisman - DOR
14	Reference: Section 5 "Exemptions" #1 1) Qualified Master Contracts and DES approved cooperative contracts. Comments: Already clearly exempt in 39.26.125(5)	This is included to clarify that purchases from "DES approved cooperative contracts" are exempt from the policy.	Heidi Whisman - DOR
15	Reference: Section 5 "Exemptions" #1 1) Qualified Master Contracts and DES approved cooperative contracts. Comments: Weird that this is listed because 39.26.060(2) says all coop purchasing must be thru competitive process.	Language has been added to clarify that it is purchases from DES approved cooperative contracts.	Heidi Whisman - DOR
16	Reference: Section 5 "Exemptions" #2 Suggest deleting. Also noted that link does not work.	The policy currently includes both types of exemptions. Those exempt from competition and those exempt from the policy.	Jason LeMoine - DOR
17	Reference: Section 5 "Exemptions" #3 Suggest deleting and moving to a separate exemption policy.	The policy currently includes both types of exemptions. Those exempt from competition and those exempt from the policy.	Heidi Whisman - DOR
18	Reference: Section 5 "Exemptions" #4 Suggested addition to 2nd sentence: "This exemption does not apply if there is more than one OEM designated reseller."	DES has added this suggested language to the policy.	Heidi Whisman - DOR

Feedback Number	Feedback to comments received through 2-28-2019	Response	Commenter
19	<p>Reference: Section 5 "Exemptions" #6 Additional software/user licenses for solutions (e.g. SAAS) that were acquired through a competitive process, provided the additional licenses are equivalent in scope to the licenses that were included in the original purchase. Software license renewals are not exempt. Comment: I suggest removing as it confuses this statement. Software licenses are sometimes user based and sometimes device based.</p>	<p>Agreed. DES has revised the policy to incorporate this suggestion.</p>	<p>Heidi Whisman - DOR</p>
20	<p>Reference: Section 5 "Exemptions" #6 Additional software/user licenses for solutions (e.g. SAAS) that were acquired through a competitive process, provided the additional licenses are equivalent in scope to the licenses that were included in the original purchase. Software license renewals are not exempt. Comment: I suggest removing. SaaS (software as a service) is typically a subscription, versus an actual license to which the purchaser becomes a "licensee". I don't think it helps to show SaaS as an example here.</p>	<p>Agreed. DES has revised the policy to incorporate this suggestion.</p>	<p>Heidi Whisman - DOR</p>
21	<p>Reference: Section 5 "Exemptions" #6 Additional software/user licenses for solutions (e.g. SAAS) that were acquired through a competitive process, provided the additional licenses are equivalent in scope to the licenses that were included in the original purchase. Software license renewals are not exempt. Comment: What does this mean? Software can change very rapidly. Say we bought 25 licenses in June, and in January determine we need 5 more. In June the version was 9, by the time January rolls around the current version being sold is 10.5, which has more functionality than 9. Is 10.5 still equivalent in scope? Perhaps something in the glossary to clarify, like you did for "Minor or administrative change" would be helpful.</p>	<p>DES provided clarification by adding a question to the FAQ.</p>	<p>Heidi Whisman - DOR</p>
22	<p>Reference: Section 5 "Exemptions" #6 Additional software/user licenses for solutions (e.g. SAAS) that were acquired through a competitive process, provided the additional licenses are equivalent in scope to the licenses that were included in the original purchase. Software license renewals are not exempt. Comment: See notes on #17 of the FAQ and consider making this an exception, perhaps with some parameters.</p>	<p>The reason why software license renewals are not exempt is that agencies should take stock on a regular basis to determine if it makes sense to renew or even change their software tools. If a change is warranted, then a competitive process is appropriate.</p>	<p>Heidi Whisman - DOR</p>
23	<p>Reference: Section 5 "Exemptions" #7 - #11 Comment: Consider if these should more appropriately be under an exemption from Competition, rather than from Sole Source, as it seems like there would be multiple, valid sources for at least some of these.</p>	<p>The policy currently includes both types of exemptions. Those exempt from competition and those exempt from the policy.</p>	<p>Heidi Whisman - DOR</p>
24	<p>Reference: Section 5 "Exemptions" #12 Comment: Would this apply if a consultant was brought in to provide some service to help enhance the performance of a management or leadership group? Or is it intended just from the individual person perspective? The way the exemption is written here seems more like it's just about me as an individual going to a seminar on something like leadership best practices. But the definition in the glossary sounds like it might apply to development efforts aimed at a leadership unit.</p>	<p>The exemption can apply to both an individual or leadership units.</p>	<p>Heidi Whisman - DOR</p>
25	<p>Reference: Section 5 "Exemptions" #13- #15 Comment: Please consider if these are really an exemption from competition.</p>	<p>The policy currently includes both types of exemptions. Those exempt from competition and those exempt from the policy.</p>	<p>Heidi Whisman - DOR</p>

Feedback Number	Feedback to comments received through 2-28-2019	Response	Commenter
26	Reference: Section 6 "Request for Exemptions not listed above" Comment: This may benefit from a procedure or at least some more info here. In my experience, the process was first to contact the DES policy staff with a heads up. Also it'd be good to know who we actually send the letter to – Directly to Chris Liu or does it really need to go through Drew Z? It doesn't seem practical that we'd just send a letter without any "heads up", but we need to know what DES prefers.	DES Enterprise Procurement Policy team is available to discuss any requests for exemptions. However, this is not a policy requirement.	Heidi Whisman - DOR
27	Reference: Section 6 "Request for Exemptions not listed above" Suggested addition to 3rd sentence: "The request must include a detailed explanation of the proposed exemption, how it is necessary for the agency to fulfill its mission , and how granting the request aligns with the intent of the law." Comment: I think it's important to include in the documentation why the agency needs to do this from a business perspective, in addition to how it still aligns with the intent of law.	DES agrees with this change. The proposed language has been added to the policy.	Heidi Whisman - DOR
28	Reference: Section 7 "Information Technology Contracts" All applicable information technology (IT) related sole source contracts must also conform to OCIO Policy #121. Agencies should confer with the OCIO and confirm if OCIO approval is required as outlined in the policy . Similarly, DES will be available to answer the agencies' IT sole source contract questions.	DES agrees with this change. The proposed language changes are reflected in the policy.	Heidi Whisman - DOR
29	Reference: Section 7 "Information Technology Contracts" All applicable information technology (IT) related sole source contracts must also conform to OCIO Policy #121. Agencies should confer with the OCIO and confirm if OCIO approval is required as outlined in the policy . Similarly, DES will be available to answer the agencies' IT sole source contract questions. Comments: The policy is pretty clear on what the threshold is for needing OCIO oversight. I don't think this policy should insinuate that we should contact the OCIO for every Sole Source just to make sure. The OCIO policy doesn't specifically mention sole source.	DES agrees with this comment. The proposed language changes are reflected in the policy and should address the comment.	Heidi Whisman - DOR
30	Reference: Section 7 "Information Technology Contracts" All applicable information technology (IT) related sole source contracts must also conform to OCIO Policy #121. Agencies should confer with the OCIO and confirm if OCIO approval is required as outlined in the policy . Similarly, DES will be available to answer the agencies' IT sole source contract questions. Comments: Why is this statement here for IT only? Isn't DES available to answer sole source questions on any type of sole source contract?	DES is available to answer all sole source contract questions. However, this section is specific to IT and is appropriate for this section of the policy.	Heidi Whisman - DOR
31	Reference "Title" and "Applies to" Sections Suggested adding "amendment" to both. Comments: Needs to be clear this applies to amendments also, and adding this aligns with the policy and FAQ.	Proposed language has been added to the Procedure.	Heidi Whisman - DOR
32	Reference Section 2.d d. Submits the request for sole source approval with DES using the Sole Source Contracts Database (SSCD) not less than 10 working days prior to the desired contract start date	This proposed change may not apply in all situations.	Heidi Whisman - DOR
33	Reference Section 2.d.iv. iv. Uploads evidence that shows the notice of intent to award a sole source contract has been posted on WEBS for a minimum of five (5) working days .	DES has added this suggested language to the Procedure document.	Heidi Whisman - DOR
34	Reference Section 3.b b. Submits the request for sole source amendment approval with DES using the Sole Source Contracts Database (SSCD) not less than 10 working days prior to the contract amendment desired start date	This proposed change may not apply in all situations.	Heidi Whisman - DOR
35	Reference: Section 3 regarding the 10 working days Comments: I think it's important to include in this paragraph that: - even if it takes longer than 10 days, the agency needs to wait for DES decision - that DES will let the agency know if it's going to take longer than 10 days to make a decision. - I'm assuming that DES will also work with the agency to obtain any clarifying or additional info they may need, so it might be good to mention that also.	DES added language to the Procedure to address these comments.	Heidi Whisman - DOR
36	Reference: Question #1 Comments: Suggest highlighting the 10 working days in the Answer	DES added language to the Procedure to emphasize the 10 business day requirement.	Heidi Whisman - DOR

Feedback Number	Feedback to comments received through 2-28-2019	Response	Commenter
37	Reference: Question #4 4. Question: <u>In the future, Rather than posting on the agency website, will</u> can't there be a central repository made available where all sole source contracts may be made available for public inspection?	DES has made the suggested revisions to the FAQ document.	Heidi Whisman - DOR
38	Reference: Question #10 Comment regarding "Agency's website" in the Answer: Need to also reference the other methods of making "available" that were mentioned in Q9.	FAQ Question #10 is about posting the sole source notice and FAQ Question #9 is about making the contract available. Additional language has been added to Question #10 to address this comment.	Heidi Whisman - DOR
39	Reference: Question #14 Answer: The language is as follows <u>Following is some suggested language:</u> For Contracts: DES Sole Source Approval: The provisions of Chapter 39.26 RCW requires the agency to file this sole source contract <u>to be filed with and approved by</u> the Department of Enterprise Services (DES) for approval before it becomes binding and before any services may be performed or goods provided under the contract. The effective date of this contract is either upon DES approval of the contract, the tenth (10th) working day after it is filed with DES, or as agreed between the parties, whichever is later. <u>Options for how to state the Effective Date of the contract:</u> <ul style="list-style-type: none"> • <u>Effective Date: this contract is effective upon the date of approval by DES, regardless of earlier date of signature by both parties. (note if taking this approach you should also communicate to the vendor, and document in the contract file, the date of DES approval).</u> • <u>Effective Date: this contract is effective on the last date of signature by a party hereto. (note that if taking this approach the contract should not be signed until DES approval is received).</u> For Amendments: DES Sole Source Approval: The provisions of <u>Department of Enterprise Services (DES) Sole Source Contract Policy (POL-DES-140-00)</u> Chapter 39.26 RCW requires the agency to file this <u>sole source contract</u> amendment to a sole source contract <u>to be filed with and approved by</u> the Department of Enterprise Services (DES) for approval. The effective date of this amendment is either upon DES approval of the amendment, the tenth (10th) working day after it is filed with DES, or as agreed between the parties, whichever is later. <u>(consider using the same notes regarding effective date, or just listing that once for both contracts and amendments).</u> The purpose of this language is to put the vendor on notice of the effective date of the contract or amendment. This is a material term for sole source contracts and substantive amendments, and is designed to prevent work occurring before a contract/amendment becomes effective. [INSERT PUBLISH DATE]	The proposed revisions do not cover all contingencies related to the effective date. Therefore, DES will continue to use the current language in the FAQ.	Heidi Whisman - DOR

Feedback Number	Feedback to comments received through 2-28-2019	Response	Commenter
40	<p>Reference: Question #14 Answer: The language is as follows Following is some suggested language: For Contracts: DES Sole Source Approval: The provisions of Chapter 39.26 RCW requires the agency to file this sole source contract <u>to be filed with and approved by</u> the Department of Enterprise Services (DES) for approval before it becomes binding and before any services may be performed or goods provided under the contract. The effective date of this contract is either upon DES approval of the contract, the tenth (10th) working day after it is filed with DES, or as agreed between the parties, whichever is later.</p> <p><u>Options for how to state the Effective Date of the contract:</u></p> <ul style="list-style-type: none"> • <u>Effective Date: this contract is effective upon the date of approval by DES, regardless of earlier date of signature by both parties. (note if taking this approach you should also communicate to the vendor, and document in the contract file, the date of DES approval).</u> • <u>Effective Date: this contract is effective on the last date of signature by a party hereto. (note that if taking this approach the contract should not be signed until DES approval is received).</u> <p>For Amendments: DES Sole Source Approval: The provisions of <u>Department of Enterprise Services (DES) Sole Source Contract Policy (POL-DES-140-00)</u> Chapter 39.26 RCW requires the agency to file this <u>sole source contract amendment to a sole source contract</u> <u>to be filed with and approved by</u> the Department of Enterprise Services (DES) for approval. The effective date of this amendment is either upon DES approval of the amendment, the tenth (10th) working day after it is filed with DES, or as agreed between the parties, whichever is later.</p> <p><u>(consider using the same notes regarding effective date, or just listing that once for both contracts and amendments).</u></p> <p>The purpose of this language is to put the vendor on notice of the effective date of the contract or amendment. This is a material term for sole source contracts and substantive amendments, and is designed to prevent work occurring before a contract/amendment becomes effective. [INSERT PUBLISH DATE]</p> <p>Comments: My perspective is that DES should be suggesting language and that agencies should be able to have slightly different language as long as it gets to the point.</p>	<p>DES prefers to have the language standard in all sole source contracts and amendments. If there are situations where the language needs to be revised, the agency may propose the changes in their filing.</p>	<p>Heidi Whisman - DOR</p>

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41	<p>Answer: The language is as followsFollowing is some suggested language :</p> <p>For Contracts: DES Sole Source Approval: The provisions of Chapter 39.26 RCW requires the agency to file this sole source contract <u>to be filed with and approved by</u> the Department of Enterprise Services (DES) for approval before it becomes binding and before any services may be performed or goods provided under the contract. The effective date of this contract is either upon DES approval of the contract, the tenth (10th) working day after it is filed with DES, or as agreed between the parties, whichever is later.</p> <p><u>Options for how to state the Effective Date of the contract:</u></p> <ul style="list-style-type: none"> • <u>Effective Date:</u> this contract is effective upon the date of approval by DES, regardless of earlier date of signature by both parties. (note if taking this approach you should also communicate to the vendor, and document in the contract file, the date of DES approval). • <u>Effective Date:</u> this contract is effective on the last date of signature by a party hereto. (note that if taking this approach the contract should not be signed until DES approval is received). <p>For Amendments: DES Sole Source Approval: The provisions of <u>Department of Enterprise Services (DES) Sole Source Contract Policy (POL-DES-140-00)</u> Chapter 39.26 RCW requires the agency to file this <u>sole source contract amendment to a sole source contract</u> <u>to be filed with and approved by</u> the Department of Enterprise Services (DES) for approval. The effective date of this amendment is either upon DES approval of the amendment, the tenth (10th) working day after it is filed with DES, or as agreed between the parties, whichever is later.</p> <p><u>(consider using the same notes regarding effective date, or just listing that once for both contracts and amendments).</u></p> <p>The purpose of this language is to put the vendor on notice of the effective date of the contract or amendment. This is a material term for sole source contracts and substantive amendments, and is designed to prevent work occurring before a contract/amendment becomes effective. [INSERT PUBLISH DATE]</p> <p>Comments: This sentence is confusing as to when the contract can actually be considered effective. In the past, DES has said that DES will try to get all Sole Source contract filings reviewed and approved/denied within 10 days of filing with DES, but if it takes longer the agency has to wait for that decision from DES. This language seems to say that if the filing is with DES for 10 days, then it's considered approved, even if DES has not yet made a decision.</p>	<p>The language used in the FAQ is designed to cover all contingencies related to the effective date. For example, the 10 working day public inspection notice before the proposed start date of the contract is specified in statute. In addition, the reason for the "as agreed upon by both parties" language is to address situations where the agency would like to start the contract after the filing period and DES approval. Therefore, DES will continue to use the current language in the FAQ.</p>	Heidi Whisman - DOR

Feedback Number	Feedback to comments received through 2-28-2019	Response	Commenter
42	<p>Answer: The language is as followsFollowing is some suggested language :</p> <p>For Contracts: DES Sole Source Approval: The provisions of Chapter 39.26 RCW requires the agency to file this sole source contract to be filed with and approved by the Department of Enterprise Services (DES) for approval before it becomes binding and before any services may be performed or goods provided under the contract. The effective date of this contract is either upon DES approval of the contract, the tenth (10th) working day after it is filed with DES, or as agreed between the parties, whichever is later.</p> <p><u>Options for how to state the Effective Date of the contract:</u></p> <ul style="list-style-type: none"> • <u>Effective Date: this contract is effective upon the date of approval by DES, regardless of earlier date of signature by both parties. (note if taking this approach you should also communicate to the vendor, and document in the contract file, the date of DES approval).</u> • <u>Effective Date: this contract is effective on the last date of signature by a party hereto. (note that if taking this approach the contract should not be signed until DES approval is received).</u> <p>For Amendments: DES Sole Source Approval: The provisions of <u>Department of Enterprise Services (DES) Sole Source Contract Policy (POL-DES-140-00) Chapter 39.26 RCW</u> requires the agency to file this sole source contract amendment to a sole source contract to be filed with and approved by the Department of Enterprise Services (DES) for approval. The effective date of this amendment is either upon DES approval of the amendment, the tenth (10th) working day after it is filed with DES, or as agreed between the parties, whichever is later.</p> <p><u>(consider using the same notes regarding effective date, or just listing that once for both contracts and amendments).</u></p> <p>The purpose of this language is to put the vendor on notice of the effective date of the contract or amendment. This is a material term for sole source contracts and substantive amendments, and is designed to prevent work occurring before a contract/amendment becomes effective. [INSERT PUBLISH DATE]</p> <p>Comments: Consider referencing policy instead of just the broad RCW. The RCW does not clearly state that amendments need to be filed with DES, so it's weird and confusing to see it referenced as the reason for filing amendments. It seems to me the requirement to file amendments for approval comes from DES's policy-making power under 39.26, and the statement in the policy that amendments must also be files. So I suggest rewording this to be more clear and accurate as to where the requirement comes from.</p>	<p>Amendments are considered part of the original contract and are therefore covered under the RCW 39.26.140.</p>	<p>Heidi Whisman - DOR</p>

Feedback Number	Feedback to comments received through 2-28-2019	Response	Commenter
43	<p>Reference: Question #14 Answer: The language is as followsFollowing is some suggested language : For Contracts: DES Sole Source Approval: The provisions of Chapter 39.26 RCW requires the agency to file this sole source contract to be filed with and approved by the Department of Enterprise Services (DES) for approval before it becomes binding and before any services may be performed or goods provided under the contract. The effective date of this contract is either upon DES approval of the contract, the tenth (10th) working day after it is filed with DES, or as agreed between the parties, whichever is later.</p> <p><u>Options for how to state the Effective Date of the contract:</u></p> <ul style="list-style-type: none"> • <u>Effective Date: this contract is effective upon the date of approval by DES, regardless of earlier date of signature by both parties. (note if taking this approach you should also communicate to the vendor, and document in the contract file, the date of DES approval).</u> • <u>Effective Date: this contract is effective on the last date of signature by a party hereto. (note that if taking this approach the contract should not be signed until DES approval is received).</u> <p>For Amendments: DES Sole Source Approval: The provisions of <u>Department of Enterprise Services (DES) Sole Source Contract Policy (POL-DES-140-00)</u> Chapter 39.26 RCW requires the agency to file this sole source contract amendment to a sole source contract <u>to be filed with and approved by</u> the Department of Enterprise Services (DES) for approval. The effective date of this amendment is either upon DES approval of the amendment, the tenth (10th) working day after it is filed with DES, or as agreed between the parties, whichever is later.</p> <p><u>(consider using the same notes regarding effective date, or just listing that once for both contracts and amendments).</u></p> <p>The purpose of this language is to put the vendor on notice of the effective date of the contract or amendment. This is a material term for sole source contracts and substantive amendments, and is designed to prevent work occurring before a contract/amendment becomes effective. [INSERT PUBLISH DATE]</p> <p>Comments: Not needed. Or reword something like, "require the agency to file all amendments to a sole source contract..."</p>	<p>The proposed revisions have been incorporated into the FAQ.</p>	<p>Heidi Whisman - DOR</p>
44	<p>Reference: Question #14 Answer: The language is as followsFollowing is some suggested language : For Contracts: DES Sole Source Approval: The provisions of Chapter 39.26 RCW requires the agency to file this sole source contract to be filed with and approved by the Department of Enterprise Services (DES) for approval before it becomes binding and before any services may be performed or goods provided under the contract. The effective date of this contract is either upon DES approval of the contract, the tenth (10th) working day after it is filed with DES, or as agreed between the parties, whichever is later.</p> <p><u>Options for how to state the Effective Date of the contract:</u></p> <ul style="list-style-type: none"> • <u>Effective Date: this contract is effective upon the date of approval by DES, regardless of earlier date of signature by both parties. (note if taking this approach you should also communicate to the vendor, and document in the contract file, the date of DES approval).</u> • <u>Effective Date: this contract is effective on the last date of signature by a party hereto. (note that if taking this approach the contract should not be signed until DES approval is received).</u> <p>For Amendments: DES Sole Source Approval: The provisions of <u>Department of Enterprise Services (DES) Sole Source Contract Policy (POL-DES-140-00)</u> Chapter 39.26 RCW requires the agency to file this sole source contract amendment to a sole source contract <u>to be filed with and approved by</u> the Department of Enterprise Services (DES) for approval. The effective date of this amendment is either upon DES approval of the amendment, the tenth (10th) working day after it is filed with DES, or as agreed between the parties, whichever is later.</p> <p><u>(consider using the same notes regarding effective date, or just listing that once for both contracts and amendments).</u></p> <p>The purpose of this language is to put the vendor on notice of the effective date of the contract or amendment. This is a material term for sole source contracts and substantive amendments, and is designed to prevent work occurring before a contract/amendment becomes effective. [INSERT PUBLISH DATE]</p> <p>Comments: Same confusing language.</p>	<p>The proposed revisions do not cover all contingencies related to the effective date. Therefore, DES will continue to use the current language in the FAQ.</p>	<p>Heidi Whisman - DOR</p>

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45	Reference: Question #16 Suggested highlighting the word "exemption"	DES references the word "Utilities" in the policy; therefore, highlighting is not necessary.	Heidi Whisman - DOR
46	Reference: Question #16 (Answer) Comment regarding obtain quotes: Why does this say "quotes" and not something like "follow all the procurement rules for obtaining quotes or completing a competitive solicitation for ISPs"? Isn't it possible that the initial term of the contract for ISP could exceed the direct buy limit and therefore requirement competition??	DES has added language to the FAQ to address this suggestion.	Heidi Whisman - DOR
47	Reference: Question #17 (Answer) Suggested highlighting the word "license renewals"	This suggestion would be inconsistent with the other questions in the FAQ. Potentially causing greater confusion.	Heidi Whisman - DOR
48	Reference: Question #17 (Answer) Answer: No. Software license renewals are not exempt and should be filed as a new sole source , if applicable, or re-competed. [INSERT PUBLISH DATE] Comments related to red text: I kind agree with the intent of this but respectfully disagree with how it's worded. A license renewal is really just an amendment to extend the contract term and should be thought of in the same light as we think of amending the term end date in any other contract: does the contract allow for extensions and would this amendment/extension remain within any stated limit of term extensions. So, we'd just file the amendment to extend/renew in SSCD, instead of a new sole source contract. However, I also think it's really important for DES to consider whether it really wants and needs to be reviewing every renewal of a term software license or software maint/support. These renewals are a basic operational need for an agency, and occur annually because SAAM only allows for 12 months advance payment for maint/support. In the majority of the cases, these renewals are for software that was competitively purchase in the first place; albeit some are sole source. Most of the software licenses are COTS that are not purchased in conjunction with a major system implementation (for example, Adobe, Snagit, Microsoft Office, and tons more that we use just to do our daily work). It may be more practical to find a way to differentiate basic, COTS, operational software from the big software license and maint/support contracts that are involved with multi-million dollar IT system implementations, fi there's really a need to keep an eye on agency renewal of software. Some important notes about software licenses (SaaS excluded): - if the license term for the software is perpetual, we are never really renewing the license. What we're renewing is the maint/support (aka software assurance). - if the license term is for a specific date, then the licensee would be required to renew (aka extend) the term in order to keep using the license. Either way, term license or perpetual license, I encourage DES to look at this as an amendment to extend the term of an existing contract. I'd be happy to discuss if that would be helpful. Heidi Whisman, DOR, 360-596-3782.	Only substantive amendments to sole source contracts must be filed with DES.	Heidi Whisman - DOR
49	Reference: "Software Maintenance and Support" 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 or program. Technical services (support) may be included or sold as a separate offering by the Licensor and are covered under this exemption. This exemption does not include maintenance or support services provided by or through a third party. Comments: This is inconsistent with the Exemptions in the sole source policy because a "sole owner-designated maintenance and support service provider" is a 3rd party.	DES has incorporated this change in the Glossary	Heidi Whisman - DOR
50	Section 2. DES sole source approval must occur before the contract is executed. o DSHS disagrees that "a contract that is executed before DES approves it as a sole source is null and void." o If DSHS enters into a contract that does not meet the 10 working day approval process by DES, the contract should be flagged as a "late filing" with the understanding that it will not receive approval from DES even if all other sole source criteria has been fulfilled.	Please see RCW 39.26.140 (2) which requires DES to "approve sole source contracts before any such contract becomes binding..."	Ed Maynard - DSHS

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51	Section 5. Exemptions. Sub Section 6. o DSHS would like to add "sole source" back in as a process that additional software/user licenses for solution can be acquired through. Recommended revision to read: o "Additional software/user licenses for solutions (e.g. SAAS) that were acquired through a competitive or sole source process, provided the additional licenses are equivalent in scope to the licenses that were included in the original purchase. Software license renewals are not exempt."	The purpose of this exemption is to differentiate additional licenses that are purchased as a part of a competitive process, rather than acquired through a sole source purchase (which has transparency requirements).	Ed Maynard - DSHS
52	Section 13. Question: What is a late filing? o Answer: 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. [INSERT PUBLISH DATE] o Question, there is no reference to "late filing" in the Sole Source Policy Revisions Draft, but it is referenced in the FAQ's? Please see the reference to "late filing" noted above for Section 2. of the Sole Source Policy Revisions Draft.	Late filings are an action related and to the filing process and therefore not appropriate in the policy or procedure.	Ed Maynard - DSHS
53	Section 5 - Exemption #2 Comments: The need exists to provide clarification on the DES interpretation of RCW 39.26.125(11) as it relates to collaborative research and 'mandated funding source'. A possible solution could be to include a question/answer in the Sole Source Contract Policy FREQUENTLY ASKED QUESTIONS outlining the DES interpretation of 36.26.125(11) by defining 'mandated funding source'.	DES has defined this term in the Glossary	Lislie Sayers - DNR
54	Section 5 - Exemption #18 The need to provide clarification on the DES interpretation of whether 'educational curriculum' (current DES policy exemption) is included in this exemption or if agencies will now be required to request a special exemption for educational curriculum based instruction contracts, or will a sole source request need to take place for these services. A possible solution could be to include a question/answer in the Sole Source Contract Policy FREQUENTLY ASKED QUESTIONS answering the DES interpretation of the new #18 exemption.	DES has removed the exemption for educational curriculum in the new policy because often educational curriculum can be competed. In situations where competition is not an option agencies can file a sole source or request an exemption from the DES director.	Lislie Sayers - DNR
55	Reference #14 Comments: don't see the need for this contract language as the process requires DES approval before the contract is executed. This language would only apply if the contract had been signed by all parties before submitting to DES for approval.	The language is necessary for putting the vendor on notice that work cannot begin or goods cannot be provided before DES approval.	Mark Gaffney - ECY
56	Section #2 Comments: States, "A sole source contract executed before is approved by DES is null and void." But, how about contracts with a late filing, where DES does not approve, would these be null and void? There are situations where contracts are time sensitive for various reasons, legislature mandates, funding restrictions, urgencies, etc. where the time frame does not allow enough time for the DES sole source process. Seems like there should be some further guidance about this statement.	Please see RCW 39.26.140 (2) which requires DES to "approve sole source contracts before any such contract becomes binding..." If there is a situation where an agency for some reason cannot go through the standard sole source filing process, the agency can request an exemption from the DES director.	Mark Gaffney - ECY
57	Section #5 - Exemptions List Comments: It is helpful to have all the exemptions listed together. I realize you did not want to relist those in the RCW, but it would help by having one place to look.	DES agrees and has decided to have all exemptions listed together.	Mark Gaffney - ECY
58	Section #5 - Exemption #4 Comments: Could "Training" be added to this exemption when provided by proprietary owner of the software?	Training will be covered under support services.	Mark Gaffney - ECY
59	Section #5 - Exemption #16 Comments: Could "social media" be added?	This suggestion has been added to the exemption in the policy.	Mark Gaffney - ECY
60	Section #5 - Exemption #17 Comments: Could you define "only when no comparable competition" when it comes to Used Goods? This could have many opinions on how far one needs to go to meet the restriction. Could "reasonably" be added or some other qualifier?	DES has revised the exemption as follows to address this comment: "Used goods to include equipment, vehicles and furniture only when the same or similar articles are not available from more than one source."	Mark Gaffney - ECY

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61	Approval Procedure #3.a Comments: You state, "Minor" amendments. Do you have any guidance?	Minor amendments would include such things as contractor's change of address, contract manager or account executive changes, etc.	Mark Gaffney - ECY
62	In the Procedure, it states, "DES will provide a decision on an agency request for sole source or sole source amendment generally within 10 working days." If DES doesn't make a decision within the 10 working days, how many days does the agency have to wait?	Although DES's goal is to provide a decision within 10 working days. The number and complexity of requests received by DES can impact DES's processing time. If DES does not issue a decision within 10 working days after the contract is provided, DES will notify the agency of any delays or need for additional time.	Tia Livingood - LCB
63	If DES doesn't make a decision within the 10 working days, what are the agency's options for escalation?	If an agency has not heard anything on their filing within 10 working days, they should initially contact the DES Enterprise Procurement Policy Team. The standard escalation process is to contact the Contracts and Procurement Division Assistant Director.	Tia Livingood - LCB
64	There needs to be something that both parties can agree to "generally" isn't clear. If DES can't approve in 10 working days than there should be a change to the timeframe.	Although DES's goal is to provide a decision within 10 working days. The number and complexity of requests received by DES can impact DES's processing time. If DES does not issue a decision within 10 working days after the contract is provided, DES will notify the agency of any delays or need for additional time.	Tia Livingood - LCB
65	I feel that there is still some room for confusion on exemption 12. If I wanted to hire a company to do a seminar at DOC, the current language seems to permit that. However, it's my understanding that this exemption is for conferences and seminars hosted by third parties and not those hosted by the agency itself.	This is correct. This exemption is for conferences and seminars hosted by third parties and not those hosted by the agency.	Daryl Huntsinger - DOC
66	1. Can you please add "client service contracts" to your glossary?	Client services is defined in statute under RCW 39.26.010(4) as follows: services provided directly to agency clients including, but not limited to medical and dental services, employment and training programs, residential care, and subsidized housing."	Anindita Mitra - CREA
67	2. (FAQ) Answer: No. Agencies are free to determine the manner in which they will make proposed contracts available for public inspection (e.g. via a location on the agency web site, through paper copies available at the agency headquarters , etc.). Can this option be offered in addition to online technology? Otherwise this will inconvenience firms that are at a distance.	Generally agencies do make contracts available through their website. However, some smaller agencies do not have a website. DES is currently exploring options for a central repository.	Anindita Mitra - CREA
68	3. Q. Situation where a contract has changed [the spend for a direct buy unexpectedly exceed the limit] and becomes a sole source which was not intended to be so initially. Need clarification in the policy. A. If the original contract was not approved as a sole source, but has since changed and would now qualify as a sole source, then the agency would file a new contract for sole source approval. DES recognizes that there are circumstances which may require other solutions. Agencies should consult with DES in those instances. Needed clarification: This sets up an unusual precedence for agencies to hire a consultant team at a low price competitively and then argue through a sole source petition that the same consultant must do phase 2 of a project because they have intimate knowledge of the project.	Direct Buy purchases are currently at \$10,000 and \$13,000. If a sole source for phase 2 was requested that significantly increases the original value of the direct buy contract, DES would scrutinize the phase 2 work and would not likely approve based on intimate knowledge only.	Anindita Mitra - CREA

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69	4. Section 39.26.090 defines Sole Source as "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." Please consider emphasizing ONLY.	This language is copied directly from the statute, as approved by the legislature.	Anindita Mitra - CREA
70	5. Q&A 19. It is not possible to anticipate the language needed in a specific contract because contract terms and conditions vary depending on the transaction. Instead, DES provides training, guidance, and relevant information to assist agencies in including the correct contract language. DES works with agencies to ensure that the sole source filing contains the necessary language that will result in timely processing of the sole source request. DES will keep high quality contracts on file for reference in future contracts. (Recommended edit)	Yes, DES will be working with stakeholders in developing standard model contract language, which will be available to all agencies.	Anindita Mitra - CREA
71	6. Renewal is an issue that has been brought up – but a term limit for renewals, say up to 2 or 3 for years for a contract with the option to extend by another 2 years should be adequate. New firms are always being created and should be given a chance to bring a fresh set of eyes to a service/product. (Maybe with the exception of software or accreditations)	As a general rule, contract terms are 5 years in length. If during that time the market has changed, agencies are encouraged to rebid instead of renewing a contract.	Anindita Mitra - CREA
72	7. Please describe "Amendments that are minor or administrative in nature" in the glossary with examples. Some might argue that changing the term of a contract is administrative in nature. Is it? Where is this in the Glossary, "Minor or administrative changes means revisions to the terms of a contract that do not affect the substantive rights of any party to that contract, such as a contractor's address change, etc. Changes to contract performance or compensation, etc. would be examples of substantive changes."	A change in contract term is not considered administrative in nature.	Anindita Mitra - CREA
73	8. Creating a checklist for agencies to run through a project or purchase for sole source would help them make the decision. Eliminating competition to reduce staff's workload cannot be considered justification for sole source contracts.	There are a list of questions that agencies are required to respond to when filing a sole source contract/amendment. These questions serve as a checklist and help agencies decide on whether they can justify a sole source.	Anindita Mitra - CREA
74	9. DES is exploring the possibility of developing a state sole source contracts web site. It would be great if this was linked to WEBS somehow as well for the stage 2 comment period.	DES is looking at linking the central repository website to either WEBS or the Sole Source Contracts Database (SSCD).	Anindita Mitra - CREA
75	10. When a project that is intended for a sole source contract, can WEBS post more details on the announcement, so that each one of us does not have to go into WEBS portal to find out more? The sole source announcement needs to be explicit. Procedures for protest and expected outcomes should be explicit in the WEBS and public announcements.	WEBS is designed to provide e-mail notification to potential vendors, which directs them to login to WEBS to access the information. Agencies are required to post the following information in WEBS: 1) A description of the purpose and scope of the contract; 2) The criteria or rationale justifying the sole source contract; 3) The name of the prospective contractor; 4) The projected contract value; 5) The period of performance, including options for extensions; and 6) A description of the process for providing vendor inquiries or responses to the posting agency, including timelines and requirements and a request for capability statements if a vendor believes they can provide the goods or services being procured under the sole source contract. The procedures for protests are not applicable to sole source. However, if a vendor is questioning a decision in the sole source process, they should escalate within the agency first and then to DES (if necessary).	Anindita Mitra - CREA

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76	11. Perhaps Procurement can set up a schedule for different departments so that the flooding of contracts during particular times of the year can be avoided?	Procurement schedules are driven by budget cycles, which results in heavier activity during certain times of the year.	Anindita Mitra - CREA
77	12. Somewhere it needs to be mentioned that it is not in the State's interest to "create" situations for sole source contracts by eliminating competition. Therefore, agency staff should make all efforts to seek competitive bids, particularly from WA State firms.	The policy states "It is the intent of the state to promote open competition and transparency for all contracts for goods and services." Sole source is considered an exception and competition should be the default.	Anindita Mitra - CREA
78	Redline Policy #2 added: <u>It would be to agencies' benefit to review THE INTENT to contract through sole source using DES' checklist, and for further clarity with DES staff prior to beginning contracting negotiations with a particular entity. Otherwise, agencies must obtain DES approval before a proposed sole source contract becomes binding, goods are received under the contract, or services are performed under the contract. No sole source contract will be binding unless it is approved by DES (RCW 39.26.140(2)). A contract that is executed before DES approves it as a sole source is null and void.</u>	DES is available for consultation and often agencies contact DES before starting the sole source process to avoid unnecessary filing and negotiations.	Anindita Mitra - CREA
79	Redline Policy #3 added: An agency must make sole source contracts available for public <u>and vendor</u> inspection for a period of not less than 10 working days <u>preferably</u> before <u>it begins negotiations with said entity and definitely before</u> the proposed <u>start</u> date of the contract. An agency must also provide evidence to DES that it posted the contract opportunity at a minimum on the State's enterprise vendor registration and bid notification system (known as the Washington Electronic Business Solution (WEBS)) <u>for a period of 10 days</u> . RCW 39.26.140(1). See PRO-DES-140-00A (Sole Source Contract Approval Procedure).	Agencies are required to post a sole source on their website for public inspection for 10 working days, which includes the general public and vendors. In addition, they are required to post a sole source in WEBS for 5 working days, which reaches only those vendors registered in WEBS. The goal is to reach all interested vendors. Statute requires agencies to have a draft contract in place for public inspection during the sole source approval process. This requires advance negotiations. However, the process must occur before the start date of the contract. Currently, the requirement is to post the sole source in WEBS for <u>5 working days</u> .	Anindita Mitra - CREA
80	Redline Policy #4 added the following footnote after the words "administrative in nature": <u>"These are described further in the glossary."</u>	DES added this suggestion to the policy.	Anindita Mitra - CREA
81	Redline Policy #6 added the following language: "...how granting the request aligns with the intent of the law <u>(please reiterate here)</u> ."	After review DES has asked agencies to include how the sole source aligns with their mission, in addition to the other information required.	Anindita Mitra - CREA
82	Redline Policy had a comment after the Forms/Instructions section that states: <u>"[A draft checklist would be helpful]"</u>	There are a list of questions that agencies are required to respond to when filing a sole source contract/amendment. These questions serve as a checklist and help agencies decide on whether they can justify a sole source.	Anindita Mitra - CREA
83	<ul style="list-style-type: none"> <u>Exemption vs. Exception:</u> In the "Reason for Policy" section and Section 1, there are references to "exemptions" from the competitive solicitation requirements of RCW 39.26. "Exemptions" are listed in RCW 39.26.100, and include things like operations of the state legislature, certain purchases by universities operating hospitals, and the purchase of bonds and insurance by the state risk manager. Notably, it does <u>not</u> include "sole source" purchases. "Exceptions" are listed in RCW 39.26. 125, and includes things like emergency contracts, direct buys, and contracts for client services. Notably, it <u>does</u> include "sole source" purchases. I believe that the references to "exemptions" need to be changed to "exceptions." 	DES made changes to the policy to reflect this comment.	Jim Gayton - HCA

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84	<ul style="list-style-type: none"> <u>Scope of Policy</u>: Also in the "Reason for Policy" section, it provides that the policy covers purchases that are "from a single source, <u>or are exempt from competition.</u>" In Section 5, all the other exceptions listed in RCW 39.26.125 are then exempted from application of the policy. Assuming that the reference to "exempt" is really a reference to "excepted," then I suggest deleting the underlined phrase and exemption 2). 	The policy currently includes both types of exemptions. Those exempt from competition and those exempt from the policy.	Jim Gayton - HCA
85	<ul style="list-style-type: none"> <u>Exemptions</u>: Exemption 15) can be deleted as redundant with RCW 39.26.140(4). 	While it is redundant, DES feels it is important to leave this exemption in the policy as it is specifically called out in RCW 39.26.140(4) to apply to sole source.	Jim Gayton - HCA
86	<ul style="list-style-type: none"> <u>Compliance</u>: Section 8 of the policy requires "sole source compliance, including adherence to the requirements of this policy." What else beyond adhering to the policy is needed for "sole source compliance"? 	There are no additional sole source requirements. The intent of this section is to emphasize adherence to the policy.	Jim Gayton - HCA
87	Section 2 (relates to DES sole source approval must occur before the contract is executed): DSHS does not believe that Section (2) of RCW 39.26.140 provides the authority to DES to deem a Contract "null and void" as DES is not a party to the contract. Contract law states that if there is an offer, acceptance, and consideration, there is a binding contract. The language should be re-written to read that the resulting contract will be considered created in violation of procurement rules and not a valid sole source contract.	The contract would be null and void because the agency does not have the authority to enter into the contract. However, any work that is performed where substantial value is conferred on the state by a contractor under a void contract, the contractor may still have legal claims for restitution.	DSHS
88	Section 4: DSHS requests that DES provide a definition or examples of "minor and administrative in nature."	The following definition is provided in the glossary: "Minor or administrative change" means revisions to the terms of a contract that do not affect the substantive rights of any party to that contract, such as a contractor's address change, etc. Changes to contract performance or compensation, etc. would be examples of substantive changes."	DSHS
89	Section 5 (Exemptions, sub-section 6 - Additional Software/User Licenses): DSHS request the addition of "sole source process" to the exemption for the purchasing of additional licenses. Therefore, we request that the updated language read as follows: "Additional software/user licenses for solutions (e.g.) SAAS) that were acquired through a competitive or sole source process, provided the additional licenses are equivalent in scope to the licenses that were included in the original purchase. Software license renewals are not exempt."	The purpose of this exemption is to differentiate additional licenses that are purchased as a part of a competitive process, rather than acquired through a sole source purchase (which has transparency requirements).	DSHS
90	This is confusing. Do we have to Post to WEBS for 5 days and also our external facing site for 10 days? Why doesn't DES need evidence that the contract was posted for 10 days, as required? If there's a reason for the 5/10 distinction, It should be made clearer what the purpose of it is.	<p>Both postings are required. The public inspection notice of 10 working days is required in statute. However, the WEBS posting is also required in statute, but the number of working days is not specified. Since WEBS directly notifies vendors, it was determined that 5 working days was adequate. Agencies are free to post for 10 working days in WEBS.</p> <p>DES does not require additional evidence that the contract was posted on the external facing site for 10 working days because DES has the assertion from the agency in the filing justification.</p>	DOL

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91	It's very important that this be clarified. This is too subjective to be widely understood the same way.	The following definition is provided in the glossary: "Minor or administrative change" means revisions to the terms of a contract that do not affect the substantive rights of any party to that contract, such as a contractor's address change, etc. Changes to contract performance or compensation, etc. would be examples of substantive changes."	DOL
92	Would like to see a copy of the Procedure: PRO-DES-140-00A	The draft Procedure DES-140-00A was provided with the draft policy documents for review. Please refer to: DES Enterprise Procurement Policy webpage.	DOL
93	I understand not repeating the 10 working day inspection period or the requirement to post on WEBS, but what would be the harm in making the amendment transparent to the public? Is that not a major point of Procurement Reform and 39.26? There should be parameters on Sole Source Amendments, i.e. no change in scope, increased spend or budget capped at 15%, etc. Standard procurement best practices, if you will but spelled out in this section. Also is DES following up on Sole Source or partnering with SAO when no amendment request is received to ensure that agencies are not blindly extending without documenting to DES?	DES is currently exploring options for a central repository (e.g. a DES webpage) to provide transparency for both sole source contract and amendments.	DOL
94	Appeal?! If DES does not grant approval for Sole Source where and how is the appeal process for an agency to escalate and appeal their request? This would be separate than Item #6 seek an exemption.	The standard escalation process is to contact the Contracts and Procurement Division Assistant Director.	DOL
95	If an agency is deemed to have not followed the sole source policy or procedure, will it be disclosed at the time to the agency that this is being documented and referred to their agency's delegated authority vs. compiling offenses without the agency realizing and then being punitive after the fact, at the time for delegated authority? If kept informed it creates an opportunity for the agency to learn and improve along the way vs continue to practice incorrectly and be penalized after the fact.	Yes, DES works closely with agencies during the sole source approval process. The agency will know at the time if the agency followed the sole source policy and procedure.	DOL
96	Sole Source can also be due to equipment or services of a proprietary nature. If it is cost prohibitive, or illogical, to replace an entire system in order to add to it, then that justifies a sole source. For instance, if your entire building is using Sure-Guard alarm systems, it would be costly to run a bid to get a different alarm system if you need to expand. Or if you have a fleet of John Deere tractors and the operators and mechanics are familiar with that type of equipment it is not efficient or logical to buy a Kubota and have to retrain staff to operate and maintain it. Per RCW this would require an exemption. I don't see a process for DES handling exemptions.	These types of situations are appropriate for the sole source filing process. Requesting an exemption from the DES Director may not be necessary. Agencies should work closely with DES Policy to determine the appropriate approach.	DOL
97	DES will provide a response "generally" within 10 days leaves a lot of uncertainty. How do you build that in to the project schedule? The word "generally" should be removed. Make a commitment.	Although DES's goal is to provide a decision within 10 working days. The number and complexity of requests received by DES can impact DES's processing time. If DES does not issue a decision within 10 working days after the contract is provided, DES will notify the agency of any delays or need for additional time.	DOL
98	The DES process overall leaves a lot of uncertainty. It's my understanding that the process now is extensive and time-consuming. Having one paragraph that details all that they do gives a lot of leeway for creating processes that are difficult to navigate. Also, they've called out every single step for the agency. That's a pretty large contradiction.	DES' works closely with stakeholders before creating or making changes to processes. Procedures for this policy are designed to inform agencies on how to obtain sole source approval. DES' role in this process is to review the filing and issue a decision. The DES review process is not articulated within this procedure.	DOL

Feedback Number	Feedback to comments received through 2-28-2019	Response	Commenter
99	Being exempt from competition does not make it sole source. There are several reasons it could be exempt from competition.	Please see the section "Reason for this Policy" where it is stated "or are exempt from this policy."	OFM
100	1. Sole source is an exemption to the competitive requirements set forth in chapter 39.26 RCW. and	DES has revised the language in the policy to align with the statute. "Exemption" is changed to "exception".	OFM
101	It is the intent of the state to promote open competition and transparency for all contracts for goods and services. One exemption to competition is a sole source contract (RCW 39.36.125(2)). If an agency concludes that a sole source contract is justified and necessary, the agency must submit the sole source contract to the Department of Enterprise Services (DES) for approval (RCW 39.26.140(1)) unless otherwise exempt (see Section 5 of this Policy). Reference PRO-DES-140-00A (Sole Source Contract Approval Procedure	DES feels this language is important to reiterate the intent of the statute.	
102	2. All sole source contracts must be approved by DES sole source approval must occur before the contract is executed. No sole source contract will be binding unless it is approved by DES (RCW 39.26.140(2)). A contract that is executed before DES approves it as a sole source is null and void.	Suggested change has been incorporated into the policy.	OFM
103	3. Transparency for the public An agency must make sole source contracts available for public inspection for a period of not less than 10 working days before the proposed starting of the contract. Comment [Remove for the public above because] This doesn't seem to be transparency to the public as the public does not have and cannot get access to SSCD so maybe this section is just "transparency"?	Suggested change has been incorporated into the policy.	OFM
104	5. Exemptions: Certain types of contracts are exempt from competition and this sole source contracts policy: 1) Qualified Master Contracts and DES approved cooperative contracts. Comment: This is not true. Of Master contracts or cooperative contracts, the use of those contracts does not require additional competition (except 2nd tier and the jury is out on whether they are actually MCs). The whole point is that they HAVE met a competitive or process so there are no further restrictions.	Reference to master contracts and DES approved cooperative contracts have been removed from the policy.	OFM
105	5. Exemptions 6) Additional software/user licenses for solutions (e.g. SAAS) that were acquired through a competitive process, provided the additional licenses are equivalent in scope to the licenses that were included in the original purchase. Software license renewals are not exempt. Comment: I urge you to reconsider this as agencies and business units build their business processes around their software tools. They should not be put in a position to change their processes just by the passage of time and a business model that requires annual renewals. While I agree that agencies and business units should take stock on a regular basis to determine if it makes sense to renew or even change their software tools, the cost to do so is always greater than just the price of the software solution. This is essentially an installed base in most cases.	The reason why software license renewals are not exempt is that agencies should take stock on a regular basis to determine if it makes sense to renew or even change their software tools. If a change is warranted, then a competitive process is appropriate. If a change is not warranted, then an agency can pursue sole source approval.	