

# Overview of Procurement and Contract Management in the State of Washington

Chapter 39.26 RCW

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Washington State Department of  
**Enterprise Services**

# *Interim Training*

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- This class **DOES NOT** meet the mandatory contracts training requirement in [RCW 39.26.110](#). It is an **INTERIM** training course to assist agencies with their training needs until the official Statewide Training Program for the Procurement of Goods and Services begins offering classes in July 2014.
- This class is intended to not only provide information but also to obtain constructive critique from the attendees to help inform the official training program.



# WebEx & Class Information

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## 2 ways to ask questions...

1. During scheduled Q&A breaks
2. Through the WebEx Chat
  - If we don't get to them during the session we will respond through a FAQ's document sent to all participants

**Please remember to MUTE YOUR PHONE during the session unless you need to speak to us. PLEASE DO NOT PUT ON "HOLD."**

**Handouts** and [links](#) have been sent via email to those that registered in LMS



# Class Objectives

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- Learn about how Procurement Reform came about
- Recognize the exceptions, exemptions, considerations and options available
- Understand delegated authority
- Understand the importance of competitive procurement and transparent processes for purchase of goods and services for state agencies
- Understand the policies for direct-buy, competitive, sole source, and emergency procurements
- Learn when to file sole source or emergency contracts and amendments



# *Class Objectives*

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- Gain working knowledge of conducting a competitive solicitation, evaluating bids and awarding a contract
- Understand basic risk management and mitigation strategies
- Understand Ethics and Contracting
- Learn about writing a good scope of work
- Learn contract management and monitoring best practices



# *Procurement Reform*

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**How did Procurement Reform came about?**



# Background

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- Engrossed Second Substitute Senate Bill (ESSB) 5931, 2011 Special Legislative Session was the enabling legislation that created DES October 1, 2011
- **ESSB 5931, Section 105(2)**

In order to effect reform and consolidation of procurement practices, the department shall review current state procurement practices, not including public works, and provide a report to the governor with procurement reform recommendations.

Due Date: December 31, 2011



# *Background*

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## Prior Statutory Scheme:

- Chapter 39.29 RCW (OFM)
- Chapter 43.19 RCW (GA)
- Chapter 43.105 RCW (DIS/ISB)
- Chapter 43.78 RCW (Printer)



# *Procurement Reform is Born*

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- **2SHB 2452**
  - Passed in the 2011-12 Legislative session
  - Signed into law on March 30, 2012
  - Codified as chapter 39.36 RCW
  - Became effective January 1, 2013.
  - Governs all state procurements for goods and services (EXCEPT Public Works)
  - Charges the Department of Enterprise Services (DES) with oversight of state procurement of goods and services – including delegation of authority.



# *Intent of Procurement Reform*

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- Promote open competition
  - Unless specifically exempted
- Promote transparency
- Centralize oversight
  - Develop policies for state contracting activity
  - Develop rules for state contracting activity



RCW 39.26.005



# *Intent of Procurement Reform*

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- Centralize location of contract data in a searchable manner
  - Contract Reporting – [data.wa.gov](http://data.wa.gov) RCW 39.26.210
  - Increase accountability with contract expenditures
  - To ensure the highest ethical standards
- Encourage/facilitate participation by Washington small businesses



# Background

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- Requires procurements to be based on a competitive solicitation (RCW 39.26.125) process, with exceptions that include:
  - Emergency (RCW 39.26.130 & Policy #DES-130-00)
  - Sole source (RCW 39.26.140 & Policy #DES-140-00)
  - Direct buy (RCW 39.26.125 (3) & Policy #DES125-03)
- DES is continuing to develop new procurement guidelines, policies and best business practices.



# *Why is Competitive Procurement important?*

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- Required by law under Chapter 39.26 RCW.
- Safeguards public funds.
- Allows for acquisition of quality goods and services at fair and reasonable prices--on time to meet the business needs of state government.
- Instills public confidence in public procurement processes.
- Encourages participation of business community to meet State's needs for a broad spectrum of goods and services.



# Why are YOU important?

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- **You** are responsible to use your depth of skill, knowledge, **critical thinking** and judgment to conduct successful competitive procurements --
  - balancing compliance with public law and policy using critical thinking that allows you to “right size” the procurement tasks with the actual procurement needs.
  - Do what “adds value.”



# Other Procurement Statutes and Policies

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- Interlocal/Intergovernmental Agreements (39.34 RCW)
- Public Works (28B.10.50 RCW, 39.04 RCW, etc.)
- Architectural and Engineering Agreements (39.80 RCW)
- Competitive Contracting (41.06.142 RCW)
- Client Service Contracts (SAAM Ch. 16)
  - Exempt from competition under 36.29 RCW
- Data Sharing Agreements (OCIO State Technology Manual, Section 140)



# *What is competitive solicitation?*

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Defined in **Chapter 39.26 RCW**:

- A **competitive solicitation** is a documented formal process providing an equal and open opportunity to bidders and culminating in a selection based on predetermined criteria.



# *What is a contract?*

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- A **contract** is a legally binding agreement between the state and another entity, public or private, for the provision of goods or services.
- Exchange of promises
- Legal consideration is usually involved
- Written
  - **Oral:** *“A verbal agreement is worth the paper it’s written on.”* Samuel Goldwin



# *What is a contract?*

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- Black's law:
  - An agreement between two or more parties creating obligations that are enforceable or recognizable at law
  - A promise or a set of promises, for breach of which the law gives a remedy
- Offer - Acceptance of the Offer - Legal Consideration



# *What is a contract?*

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- **Basic Elements of a Contract**
  - Identification of the Parties
  - Scope of Work
  - Period of Performance
  - Compensation
  - Terms and Conditions
    - Special
    - General
  - Executed by Individuals with Signature Authority



# What are Goods? What are Services?

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Defined in Chapter 39.26 RCW:

- **Goods** – “products, materials, supplies or equipment provided by a contractor”
- **Services** – “labor, work, analysis, or similar activities provided by a contractor to accomplish a specific scope of work”
  - Using knowledge, skills and abilities to accomplish the work.
  - No distinction between personal and purchased services.



# *What is a Purchase Order?*

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- Black's Law:
  - A document authorizing a seller to deliver goods with payment to be made later.
- Can be used to purchase some services as well.
- Is considered an agreement between the buyer and the seller.



# When do I use a Purchase Order?

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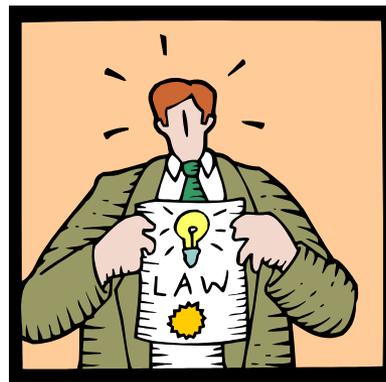
- **Goods:** product can be clearly articulated by part number or clear description, is not customized except by ordering commercially available features and functions (no custom orders).
- **Services:** "canned" or commodity-like and adhere to industry standard structure (example: inspections/maintenance that utilize checklists and repairs that follow a structured process - as in mechanical systems). Service/outcome is the same for all customers. These should be used for single purchases.



# *Exceptions, Exemptions & Options*

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**What are the exceptions, exemptions, considerations and options available?**



# *Examples of Exceptions to Competition*

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Exceptions under RCW 39.26.125:

- Emergency contracts
- Sole source contracts
- Direct-buy purchases
- Contract amendments
- Intergovernmental agreements (39.34 RCW)
- Client Service Contracts (SAAM Ch. 16)



# Examples of Exceptions to Competition

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Exceptions under RCW 39.26.125 (cont.)

- Purchases from master contracts established or authorized by DES (except where 2<sup>nd</sup> tier is required):
  - Master contracts awarded by DES
  - Cooperative purchasing agreements with other public entities
  - Other qualified/authorized master contracts
- Exemptions from competition for specific contracts or groups of contracts approved by DES Director



# Exceptions to Competition

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## Exceptions under RCW 39.26.125 (cont.)

- Condition of funding – When use of a specific contractor is mandated by the funding source
  - Collaborative Research: When contractor is named in grant application and application is approved
- Architectural engineering agreements but must be competitively awarded under 39.80 RCW
- Expert witness contracts awarded by Attorney General's Office

**This is not a complete list. See statute and consult with your contract/purchasing professionals or DES.**



# Examples of other Exemptions

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## Exemptions to RCW 39.26:

- Operation of the Washington State Legislature
- Contracts for the establishment, operation and/or management of State Data Center (CTS)
- Purchase of specialized equipment, instructional and research material by institutions of higher education
- Universities, DOC and DVA: Purchases for hospital operation, including materials, supplies and equipment, when using nonprofit cooperative hospital purchasing organization contracts
- DSHS and HCA: Interpreter services and interpreter brokerage services



# *Prohibition on Contracting*

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Under RCW 39.26.040:

- Agencies that are authorized or directed to establish, boards, commissions, councils, committees, etc. **comprised of volunteers** who advise on the activities or management of the agency -- may not contract with those volunteers as a way to reimburse them for their services.



# Socio-economic Factors

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Under 39.26 RCW:

- Encouraged to award contracts to Washington small businesses including:
  - Microbusinesses (gross revenue <\$1M annually)
  - Mini-businesses (\$1M to <\$3M annually)
  - OMWBE certified minority-owned businesses
  - OMWBE certified women-owned businesses
  - DVA certified veteran-owned businesses.
- Consider human health and environmental impacts, when applicable.



# Socio-economic Factors

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- May purchase products and/or services manufactured or provided by community rehabilitation programs of Department of Social and Health Services (DSHS).
- Preferences are given to bidders who offer goods or services that have been or will be produced or provided by Correctional Industries, an inmate work program of Department of Correction (DOC).
- Consider the social responsibility practices (e.g., sweat free labor practices) of the vendor or the items to be supplied, when applicable.



# *Delegated Authority*

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**Understand delegated authority thresholds**



# Delegated Authority

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## RCW 39.26.090(5)

[DES shall] have authority to delegate to agencies authorization to purchase goods and services. The authorization must specify restrictions as to dollar amount or to specific types of goods and services, **based on a risk assessment process developed by the department.**

Acceptance of the purchasing authorization by an agency does not relieve the agency from conformance with this chapter or from policies established by the director. **Also, the director may not delegate to a state agency the authorization to purchase goods and services if the agency is not in substantial compliance with overall procurement policies as established by the director.**



# Delegated Authority

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Under RCW 39.26.090:

- “Interim” delegation was granted to agencies as of January 1, 2013, under Policy #DES-090-00.
- Future delegation will be based on a risk-assessment approach.
  - Risk Assessment Pilot conducted 2013



# Delegation of Authority Policy

Agency Size	Commodities	Services	Information Technology
*Micro (Less than 50 FTEs)	\$50,000	\$50,000	\$50,000
*Small (50 – 200 FTEs)	\$50,000	\$250,000	\$250,000
Medium (201 – 500 FTEs)	\$50,000	\$500,000	\$500,000
Large (more than 500 FTEs)	\$50,000	\$1 million	\$1 million

\*The delegation to micro and small agencies is limited to those agencies that have “dedicated procurement professionals” performing agency procurements. If the agency does not have procurement professionals on staff, the agency will need to contact DES to obtain its interim authority.



# *Risk Assessment Pilot*

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- **Business Objective**
  - Properly assess agency strengths and weaknesses as it relates to procurement activities and develop a risk level for each agency.
  - Determine appropriate delegation level for each agency
  - Provide meaningful oversight
    - December 2013 final report on pilot and the policy on the risk assessment, delegation and oversight.
    - January 2014 Begin implementation to all state agencies in accordance with the schedule.



# Delegated Authority

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- Agencies have unlimited delegated authority when purchasing directly from a “qualified master contract” except:
  - 2<sup>nd</sup> Tier competition
    - Limited to agency delegated authority
- Higher Ed has delegated authority under chapter 28B RCW



# ***Class Discussion / Feedback***

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Given the introduction about the importance of competition, with its exceptions and exemptions, what do you think are the benefits of the new law--RCW 39.26? Do you see any advantages? disadvantages?



# Class Pre-Exercise

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Match the best practices on the right to what you consider the best step order on the left. What do you think?

- |        |   |
|--------|---|
| Step 1 | What does the market look like? Is there a sole provider of the services/goods or are there multiple sources? |
| Step 2 | Does the program have funds available for the procurement?  |
| Step 3 | Does the agency have the proper Delegated Authority?  |
| Step 4 | Is there a convenience contract available?  |
| Step 5 | What is the business need or problem that needs to be resolved?   |
| Step 6 | Does the agency have proper procurement professionals to conduct the solicitation?                            |
| Step 7 | Is there a Master Contract available?   |
| Step 8 | What is the estimated budget?   |



# *Direct Buy*

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Understand the policy for direct-buy

DES-125-03



# Direct Buy

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Under RCW 39.26.125(3) and Policy #DES-125-03:

- Definition: A procurement not requiring a competitive process.

The DES director shall establish policies to define criteria for direct buy purchases. These criteria may be adjusted to accommodate special market conditions and to promote market diversity for the benefit of the citizens of the state of Washington.

- **Less than or equal to \$10,000**, excluding sales tax



# Direct Buy

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- Agencies are encouraged to purchase from small businesses (see 39.26.010 (17) (18) and (21))
  - **\$3,000** additional authority (excluding sales tax)
  - Small, mini and micro businesses must self-certify
    - Self-Certification Statement can be found at:  
<http://des.wa.gov/services/ContractingPurchasing/PoliciesTraining/Resources/Pages/sampleForms.aspx>
  - Small business is also defined as “certified with Office of Women and Minority Owned Business Enterprise (OMWBE) under chapter 39.19 RCW.

**NOTE: This does not apply to Higher Education!**



# *Direct Buy – Higher Ed*

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- **3SHB 2585 – 2011-12 Session**
  - Modified certain rules on procurement for institutions of Higher Education
- **Added language to RCW 28B.10.029**
  - Direct Buy limit for HE – up to \$9,999
  - No exception for small business



# Direct Buy

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- Limit is **inclusive of any costs** that are or would be normally incurred during the initial purchase.
- Limited to **single** purchases.
- Monitor repetitive purchases – aggregate when warranted.
- Cannot unbundle or manipulate into smaller purchases to qualify for the direct-buy limit to avoid the competitive process.



# *Direct Buy*

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- **Agencies must use existing “qualified master contracts” prior to engaging in a direct buy, if it meets business needs.**
- No competition required, but advisable whenever possible.
- Agency determines appropriateness of decision to contract.
- Exempt from sole source requirements.





# *Competitive Procurement*

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Understand the importance of **competitive procurement** and transparent processes for purchase of goods and services for state agencies.



# What is Competitive Procurement?

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- Procure:
  - “to obtain, especially by care or effort.”  
(Oxford Dictionary)
- Procurement contract – [Black’s Law] – a contract in which a government receives goods or services...including a bidding process...subject to government regulation.
- Public sector procurement - Process for acquiring goods and services through use of transparent and open competition in compliance with applicable laws and regulations.



# High-Level Procurement Stages

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Identify, prioritize and document agency's business needs.

Conduct the competitive acquisition for goods and/or services in compliance with law and policy using best practices and critical thinking.

Administer the contract to ensure goods and/or services are received and all contract terms are met.



# Checkpoints Before Beginning a Competition

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- ✓ **Is a Master Contract available? If “yes”, use it if it meets your needs!**
  - “A contract for specific goods or services, or both, awarded by DES on behalf of agencies and for general use by agencies.”
    - Master contracts provide efficiency, quality, and reduced costs.
    - Some require 2<sup>nd</sup>-tier competition, but the 2<sup>nd</sup>-tier is often more efficient than a new procurement.
    - Work orders issued under the master contracts are executed between the agency and the contractor.



# Checkpoints Before Beginning a Competition

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✓ Does your agency have a **convenience contract** available? If “yes”, use it if it meets your needs!

- “A convenience contract is a contract for specific goods or services, or both, that is solicited and established by the **department** in accordance with procurement laws and rules on behalf of and for use by a specific agency or group of agencies as needed from time to time. A convenience contract is not available for general use and may only be used as specified by the **department**.”
  - Follow the steps documented in the original procurement for 2<sup>nd</sup>-tier selection (rotation basis, 2<sup>nd</sup>-tier competition, geographic area, etc.) to engage in the use of the contract.



# Checkpoints Before Beginning a Competition

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- ✓ Is there a **qualified cooperative purchasing agreement** available (i.e. WSCA)? If “yes”, use it if it meets your needs!
  - “A contract for specific goods or services, or both, awarded by DES with one or more states, state agencies, local governments, local government agencies, federal agencies, or tribes located in the state.”
    - Purchase can be made directly from the contract and/or as set forth in the contract document.
- <http://www.des.wa.gov/services/ContractingPurchasing/CurrentContracts/Pages/default.aspx>



# Checkpoints Before Beginning a Competition

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- ✓ Under Policy #DES-170-00 agencies must have clear and transparent **complaint, debrief** and **protest processes** in place.
  - **Complaint:** Provides for process to submit complaints up to 5-business days before the deadline for bid submission.
  - **Debrief:** Provides the bidder an opportunity to learn the strengths and weaknesses of their bid. Required in order to protest.
  - **Protest:** Provides for protest process after the apparent successful bidder is announced but before contract is signed, in accordance with specific timelines.



# Competitive Threshold

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- Competition: **\$10,001 or more** – Up to maximum of agency's Delegated Authority from DES.
  - Agency conducts competition within delegated authority
  - If procurement is higher than delegated authority and/or if agency does not have procurement professionals, DES will conduct the solicitation, **provide coaching, or delegate authority to the agency for that solicitation.**
  - Agencies should begin building capacity and skills when training program begins –  
7/1/2014



# Class Post-Exercise

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Match the best practices on the right to what you consider the best step order on the left. What do you think?

- |        |   |
|--------|---|
| Step 1 | What does the market look like? Is there a sole provider of the services/goods or are there multiple sources? |
| Step 2 | Does the program have funds available for the procurement?  |
| Step 3 | Does the agency have the proper Delegated Authority?  |
| Step 4 | Is there a convenience contract available?  |
| Step 5 | What is the business need or problem that needs to be resolved?   |
| Step 6 | Does the agency have proper procurement professionals to conduct the solicitation?                            |
| Step 7 | Is there a Master Contract available?   |
| Step 8 | What is the estimated budget?   |



# ***Class Exercise (Best??) ANSWER***

## ***What did you come up with?***

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- Step 1            What is the business need or problem that needs to be resolved?
  
- Step 2            What is the estimated budget?
  
- Step 3            Does the program have funds available for the procurement?
  
- Step 4            Does the agency have the proper Delegated Authority?
  
- Step 5            Is there a Master Contract available?
  
- Step 6            Is there a convenience contract available?
  
- Step 7            What does the market look like? Is there a sole provider of the services/goods or are there multiple sources?
  
- Step 8            Does the agency have proper procurement professionals to conduct the solicitation?



# *Competitive Process*

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**Gain working knowledge of conducting a competitive solicitation, evaluating bids and awarding a contract**



# Starting the Competitive Process

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- Develop competitive solicitation document.
- Typical types include:
  - Request for Quotations/Quotes (RFQ)
  - Request for Qualifications and Quotations/Quotes (RFQQ)
  - Request for Bids/Proposals (RFB/RFP)
  - Letter to Request Bids (LRB) – *low dollar value and/or low risk - Informal*



# Informal or Formal Competition?

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- Complexity of a procurement determines whether it should be considered “informal” or “formal” – not just dollar amount.
- **“Informal” characteristics** include:
  - Well-established or well-defined product or service that is readily available in the market-place from multiple sources.
  - Product is standard, easily definable, or service is common, routine or repetitive.
  - Cost is frequently the primary factor for award.
  - Short-term duration of contract may be a factor, but is not compelling in and of itself.
  - Low risk to the agency.



# *Informal or Formal Competition?*

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- Higher Ed has specific threshold for Informal Competition:
- RCW 28B.10.029(1)(c)(iii) - \$10K - \$99,999



# *Informal or Formal Competition?*

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- **“Formal”** characteristics include:
  - Product or services are more specialized and complex and may require more customization and advanced knowledge.
  - Multiple firms may be available but product or services represent a higher level of specialization, complexity and expertise.
  - Project involves multiple types of services and/or products to complete contract requirements successfully.
  - Multiple funding streams involved with project.
  - Costs have a greater budgetary impact.
  - Multiple subcontractors likely to be used to complete project.



# Informal or Formal Competition?

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- **“Formal”** characteristics include (cont.):
  - Contract duration is several months/years to complete a multi-faceted project.
  - Considered medium to high-risk by agency management.
  - Progress reports required throughout to communicate project status. On-site reviews may be conducted.
  - Contractor will have access to agency IT systems and data; could involve confidential data.
  - Health or safety implications and/or mitigation involved with contract.
- Higher Ed – procurement \$100K+



# *Informal or Formal Competition?*

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- **Whether formal or informal, always include the following information in your solicitation document:**
  - Project background, specific problem or need
  - Detailed scope of work or description of goods
  - Firm bid due date
    - Determine by complexity of procurement
    - 2 weeks is minimum , 4 weeks is reasonable
  - Options to renew or amend
  - Insurance requirements (optional depending on procurement)
  - Specific bid preparation and submission instructions
  - Evaluation process



# *Public Notice of Solicitation*

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- **Washington Enterprise Business Solution (WEBS)** system is required for posting ALL competitive solicitations.
  - Post under applicable Commodity Codes.
  - Optional: Notify potential bidders through other notices and postings, email, newspaper advertisements, trade journals, etc.
  - Provide reasonable notice to all prospective bidders of any resulting modification or cancellation to the competitive solicitation through WEBS as well.



# World Trade Organization (WTO)

## Requirements

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- The WTO provides legal ground rules for international commerce in order to break down trade barriers born in 1995.
- Simply put: the WTO deals with the rules of trade between nations at a global or near-global level.
- Applies to executive cabinet agencies only:
  - Procurement is \$558,000 or more including all fees, expenses, taxes, etc.
    - Publish legal notice of planned procurement in newspaper or on WEBS at least 40 working days from date of publication on WEBS.
  - DES Policy is in draft. <http://www.wto.org/>



# *Request for Quotes (RFQ)*

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**Objective:** *Overview and steps for a RFQ*



# Request for Quote (RFQ) Overview

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- Typically used for ***more standard, basic or repetitive purchases of goods and services*** that have multiple suppliers readily available in the marketplace.
- **Examples:** Document storage, equipment rental, steam cleaning services, pest/weed control services, etc.
  - **Class: Can you think of others??**



# Request for Quote (RFQ) Overview

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- Document must clearly describe and thoroughly define the product, goods or services being solicited.
- Cost is the highest weighted factor. Primarily looking for the best price from among multiple, qualified bidders.



# Steps for RFQ

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1. Assign RFQ Coordinator.
2. Issue RFQ to multiple firms, through WEBS. If issuing to a firm that is not in WEBS, encourage them to get registered.
3. Respond to questions or issues about the RFQ via amendments posted on WEBS.
4. Receive bids, document date/time of receipt – maintain confidentiality.



# Steps for RFQ

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5. Evaluate costs/rates in bids, in accordance with RFQ, and rank bids.
6. Award to the lowest cost, responsive bid/responsible bidder.
7. Announce apparent successful bidder and notify unsuccessful bidders. Post award results on WEBS.
8. Conduct debriefings, if requested.
9. Negotiate and award contract.



# *Request for Qualifications & Quotations/Quotes (RFQQ)*

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**Overview and steps for a RFQQ**



# *Request for Qualifications and Quotations (RFQQ) Overview*

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- Use for **more complex products or services** than that used for a Request for Quote.
- Firm is to demonstrate its qualifications to provide services and/or goods and their costs, fees or pricing.
- Scope of work is already clearly defined – what and how
- **Examples:** Grant writing, quality assurance, appraisal services, economic analysis, etc.
  - **Class Discussion:** Other examples?



# RFQQ Overview

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- Evaluation based on both qualifications and cost—not cost exclusively.
- Proceed with process similar to that used for a Request for Bids/Proposals (RFB/RFP)—shown on upcoming “Steps with RFB/RFP” slides.



# *Request for Bids/Proposals (RFB/RFP)*

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Overview and steps for a RFB/RFP.



# *Request for Bids/Proposals (RFB/RFP) Overview*

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- RFB/RFP is used for **more complex projects and services, products and goods.**
  - RFB – products and goods
  - RFP – services
- Complexity of the project often requires involvement of a team of staff to develop the sections of the solicitation, evaluate bids/proposals, and to ensure strong contract management upon award.



# RFB/RFP Overview

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- **Examples:**

- Design and implementation of an information technology system to solve a complex business problem or need.
- Major business process analysis and assessment within an agency or major program of an agency.
- Major assessment and testing processes
- Research services related to major health or scientific policy development.
- Environmental products related to mitigation of hazardous waste.

- **Class Discussion:** Other examples?



# RFB/RFP Overview

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- RFB/RFP **includes requirements for bidders** specific to the project. Seeks a solution to your business need. Bidders should respond with such things as:
  - Detailed project approach/methodology (what vs. how)
  - Comprehensive work plan or technical plan to accomplish the defined statement of problem/need described in the RFB
    - May include project timeline/schedule
  - Description of outcomes and performance measures
  - Identification of risks and how to manage the risks
  - Description of deliverables
  - Creative approaches and alternatives



# RFB/RFP Overview

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- RFB/RFP **includes requirements for bidders** specific to the project. Bidders should respond with such things as (cont.):
  - Management/staffing plan and identification of any subcontractors to be utilized to accomplish the services;
    - » Bidder profile and business information;
    - » Bidder experience;
    - » Experience of Bidder's lead staff person and other staff;
    - » References for Bidder, lead staff person and subcontractors, if any - agency may contact references at its discretion; and
  - Detailed cost information to complete the project.



# RFB/RFP Overview

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- Establish role of RFB/RFP Coordinator vs. contract manager and evaluators
- Program staff / subject matter experts (SMEs): Involve the program staff in drafting the requirements, providing relevant background, developing evaluation criteria, determining budget implications, identifying vendor community, etc.
- Select evaluation team to score and rank bids, participate in debriefings, and protests, if required.



# RFB/RFP Overview

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- **Evaluation** is based on multiple factors, including but not limited to:
  - **Technical:** Proposed approach/business solution to the problem.
  - **Management:** Proposed bidder and bidder staff qualifications and experience to implement the solution, and ability to meet project schedule.
  - **Products:** Specifications related to product certifying effectiveness.
  - **Cost:** Proposed rates/fees/costs to complete the work proposed or provide the product.
- Weight the scoring of evaluation components to document importance to the agency (i.e. Technical – 30%, Management – 40%, Cost – 30%).



# Steps with RFB/RFP

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## 1. Prepare **thorough and complete RFB/RFP document.**

- Background and business need in order for potential bidders to understand what you need and how best to propose a solution;
- Clear requirements and instructions to ensure responsive bids/proposals;
- Estimated schedule associated with the RFB/RFP and bid due date/time;
- Bid/proposal formatting;
- Evaluation criteria and weighting;



# Steps with RFB/RFP

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## 1. Prepare **thorough and complete RFB/RFP document** (cont.):

- Pre-bid conference, as applicable;
- Requirements for demos or oral interviews
- Question and answers from potential bidders and amendments to RFB/RFP;
- Proposed contract terms and conditions;
- Insurance requirements;
- Complaint process, debriefing and bid protest processes, etc.;
- Proprietary information and public disclosure;



# Steps with RFB/RFP

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## 1. Prepare **thorough and complete RFB/RFP document** (cont.):

- Create forms to ensure consistency of bid components, for example:
  - Certifications and assurances
  - Bidder response templates
  - Bidder profile and business information
  - References, including bidder, lead staff person and subcontractors
  - Technical and/or business requirements response sheets
  - Cost
- Create evaluation summary sheets, forms, and reference questions in advance of bid submittal due date; and
- Create interview questions and demonstration material, if applicable.



# Steps with RFB/RFP

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## 2. Convene and train **evaluation team**.

- Use a minimum of 3 evaluators for scoring; for complex, large-scale projects teams of evaluators may be used.
  - Represent a variety of skills and knowledge applicable to the procurement.
- Maintain confidentiality of bids/proposals throughout evaluation process to protect bidders' offers.
- Evaluation team members each sign and date form ensuring:
  - No conflict of interest with bidders, and,
  - Will maintain complete confidentiality throughout the evaluation process to protect bidders' offers and ensure integrity of the process.
- Review evaluation criteria and forms.



# Steps with RFB/RFP

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## 3. Post RFB/RFP on **WEBS**.

- Selecting applicable commodity code(s)
- Ensure that all vendors receive the same information throughout the process.
- *Additional ways to advertise:* Agency website, professional or trade journals, newspapers, etc.
- Direct all non-registered vendors to WEBS to register under the applicable commodity code(s)
- Add WEBS instruction language to solicitation document



# Steps with RFB/RFP

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4. Provide **answers to vendors' questions** via addenda/amendments and post promptly on WEBS.
  - Only vendors who have downloaded the RFB/RFP will receive notice of any amendments posted on WEBS.



# Steps with RFB/RFP

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## 5. Pre-bid/**bid**ders conference (optional)

- Used if the project is complex and likely to raise many questions so that you can clarify issues and requirements.
- Generally vendor attendance is not mandatory but can be depending upon the project.
- Post answers via a written addendum/ amendment on WEBS to substantive issues and questions.



# Steps with RFB/RFP

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## 6. Provide for a **complaint process (Policy #DES-170-00)**.

- Vendors may submit complaints regarding the following related to the RFB/RFP:
  - Unnecessarily restricts competition;
  - Evaluation or scoring appears unfair or flawed;
  - Requirements are inadequate or insufficient to prepare a response.
- Deadline for complaints: five (5) business days before due date for bids.
- Agency response, including any changes to the solicitation, must be posted on WEBS before agency proposal due date.



# Steps with RFB/RFP

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## 7. Receive bids/proposals noting date/time received.

- If hard copy submittal, initial or sign the bid/proposal indicating receipt, date stamp, and time stamp or write down time indicating it was received by the due date/time.
- If electronic, retain email showing date and time received.
- Reject late bids.
  - Few exceptions exist:
    1. Only one bid received—the late one;
    2. Clear mishandling on the part of the State related to receipt of a hard copy bid; or,
    3. State's computer system was not functioning properly for receipt of an electronic bid.



# Steps with RFB/RFP

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8. RFB/RFP Coordinator conducts **initial screening** of bids/proposals for responsiveness to administrative requirements.
  - Use a checklist for responsiveness form.
  - May contact a bidder for clarification of bid/proposal, but a bidder may not change the bid.
  - If bid is considered non-responsive, coordinator should send rejection letter to bidder.
  - Be sure to work with your team to determine if they agree with your non-responsive decision.
9. Evaluation team(s) **scores responsive bids/proposals** strictly against criteria set forth in the RFB/RFP, using score sheets consistent with RFB/RFP requirements.



# Steps with RFB/RFP

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## 10. Conduct **oral interviews and/or product demonstrations with top scorers.**

- Invite bidder key/lead staff to interview with evaluation team
  - Each bidder is asked the same set of questions
  - Document bidder answers and score/rank
- Invite bidder key/lead staff to provide a product demonstration based on scripts provided by the agency
  - Each bidder receives same set of scripts
  - Document outcome by scoring/ranking demonstrations



# Steps with RFB/RFP

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## 11. For complex solicitations proceed with **Best and Final Offers:**

- Option to proceed with Best and Final Offers (BAFO) after evaluation – if referenced in the solicitation document.
- Agency can utilize this step if seeking higher value, more satisfactory bids/proposals from top finalists than originally submitted.
  - **NOTE:** Cannot be used to change a non-responsive bid to a responsive one.



# BAFO

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- Evaluators meet with top-scoring bidders and advise them of the weaknesses and ambiguities in their respective bids.
- Bidder has opportunity to revise its proposal to make a more appealing offer and submit it by a specific date/time.
- Bid/proposal changes are usually to the originally proposed price.
- Evaluators score 2<sup>nd</sup>-round of bids submitted and make award decision. Use same evaluation criteria unless revised evaluation criteria was developed and communicated to the bidders.



# Steps with RFB/RFP

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## 12. Proceed with **award**.

- Determine ranking of bids/proposals based on final evaluation scoring.
- Conduct reference checks, as determined applicable, for top ranking firm(s).
- Select Apparent Successful Bidder/Vendor and notify the bidder in writing of the award decision.
- Notify unsuccessful bidders in writing.
- Post award decision on WEBS.
- Notification starts the three (3) business day clock for **debriefing** requests from unsuccessful bidders.

- **NEW:** Bid submissions and bid evaluations are **exempt from public disclosure** until the agency announces the apparently successful bidder (RCW 39.26.030 (2)).



# Steps with RFB/RFP

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## 12. Other **options**:

- Reject all bids if none are acceptable, e.g., costs too high, non-responsive, not qualified, didn't adequately address business need, etc.
- Cancel the solicitation or revise and re-issue it, e.g., needs/conditions changed at agency, funding was withdrawn, etc.

**NOTE:** Agency can reject the bid of any vendor who has failed to perform satisfactorily on a previous contract with the State.



# Steps with RFB/RFP

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13. Conduct **debriefing conferences** with unsuccessful bidders, as requested, according to the schedule in RFB/RFP.
- Hold within three (3) business days of the request.
  - Debriefing conference starts the clock for the five (5) business day protest period.
  - Vendor cannot protest if they did not debrief
  - Limit to critique of requesting consultant's proposal only
  - In person or by phone, may be time limited
  - Opportunity to provide constructive criticism to vendor



# Steps with RFB/RFP

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14. If a **protest is submitted**, carefully follow bid protest procedures according to the RFB/RFP schedule. Do not sign a contract while a protest is in process.



# Steps with RFB/RFP

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## 15. Conduct **contract negotiations** with Apparent Successful Bidder/Vendor (ASB/ASV).

- Assign a negotiation team, comprised of subject matter experts, and contracting professionals, to obtain the best deal for the State.
- Make agreed upon edits to the contract documents and bid/proposal.
- Once agreement is reached, finalize and sign contract.
- If negotiations fail with the ASB/ASV, the second ranked bidder may be invited to participate.



# Other Considerations for RFB/RFP

❖ Other things to consider during the evaluation and award phase – be sure to include in solicitation:

- **“Responsible” bidder** includes the following factors (RCW 39.26.160(2)):

- Ability, capacity and skill of bidder.
- Character, integrity reputation, judgment, experience and efficiency.
- Perform within the time specified.
- Quality of performance on previous contracts.
- Compliance with law on previous and existing contracts.
- Related information having a bearing on decision.
- No previous contract terminated for breach of contract.

- Licensed in Washington or provides a commitment to become licensed within 30 days of being selected as ASB.



# Other Considerations for RFB/RFP

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- ❖ Other things to consider during the evaluation and award phase – be sure to include in solicitation (cont.):
  - **“Best value” criteria** includes the following (RCW 39.26.140(3)):
    - Bid satisfies the needs of the State as specified in the solicitation.
    - Bid encourages diverse contractor participation.
    - Bid provides competitive pricing, economies and efficiencies.
    - Bid considers human health and environmental impacts.
    - Bid appropriately weighs cost and non-cost considerations.
    - Life-cycle cost.



# Other Considerations for RFB/RFP

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## Award preferences under RCW 39.26:

- Preference for Inmate Work Programs (IWP) through DOC (RCW 39.26.250)
- Preference for recycled material (RCW 39.26.255)
- Preference for in-state firms (reciprocity) (RCW 39.26.260)
- Preference for electronic products meeting environmental performance standards (RCW 39.26.265)



# Post-Award Steps

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1. Ensure solicitation and contract files are complete (see next slides).
2. Hold initial meeting with contractor so project starts with clearly understood expectations, roles and responsibilities.
3. Pro-actively manage contract to ensure receipt of quality goods and services and contractor compliance with terms; monitor contract performance; verify quality of deliverables and accuracy of invoices (only approve if accurate); resolve any issues/problems promptly, etc.

**This is the Contract Manager's job!**



# Important Documentation for the File

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- ✓ Names of firms solicited through WEBS and other methods.
- ✓ Copy of the solicitation document and any amendments.
- ✓ Copies of key correspondence/emails related to conduct of the solicitation.
- ✓ Copies of bids/proposals submitted--both successful and unsuccessful, with cover sheets documenting when received.
- ✓ Evaluator score sheets utilized and summary score sheet of final totals from the written evaluation.



# Important Documentation for the File

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- ✓ Description of the evaluation process.
- ✓ Oral interview documentation and scoring/ranking.
- ✓ Demonstration documentation and scoring/ranking.
- ✓ Written notification to successful & unsuccessful bidders.
- ✓ Rationale as to why the successful bidder was selected.
- ✓ Copy of WEBS activity related to the solicitation.
- ✓ Copy of executed contract.
- ✓ Copy of Certificate of Insurance, as required.
- ✓ Proof of contractor being licensed in Washington.



# Records Retention Requirements

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- ✓ Retain all documents in accordance with records retention schedules:
  - **Solicitation documents** are retained six (6) years after closure or cancellation date.
  - **Unsuccessful bids** are retained three (3) years after bid award or cancellation date.
  - **Vendor protests** of agency solicitations and vendor appeals to protest decisions are retained six (6) years after final disposition of protest/appeal
  - **Contract documents** including the **successful bid** are retained six (6) years after termination or contract expiration.



# *Class Exercise*

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What type of solicitation method (RFQ, RFQQ or RFB/RFP) would best fit the following business needs?

1. New statewide IT system
2. Child support check printing and mailing
3. Temporary clerical services
4. HVAC cleaning
5. Feasibility study
6. Training curriculum development
7. IT software from authorized reseller
8. Project management services



# ***Class Exercise (BEST??) ANSWERS***

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1. New statewide IT system **(RFP)**
2. Child support check printing and mailing **(RFQQ)**
3. Temporary clerical services **(RFQQ)**
4. HVAC cleaning **(RFQ)**
5. Feasibility study **(RFP)**
6. Training curriculum development **(RFP)**
7. IT software from authorized reseller **(RFQ)**
8. Project management services **(RFP or RFQQ)**



# Sole Source

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Understand the **policy for sole source**

**Policy #DES-140-00**



# Sole Source

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Under RCW 39.26.140:

## Definition-

"Sole source" means a contractor providing goods or services of such a **unique nature** or **sole availability** at the **location required** that the contractor is clearly and justifiably the only **practicable source** (**best source**) to provide the goods or services.



# Sole Source

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## Three (3) actions required:

1. **Post on WEBS** intent to procure sole source on goods/services
  - Post for no less than 5 working days
2. Make all contracts available for **public inspection**
  - Post on agency website at least 10 working days prior to intended contract start date
3. **Submit to DES/file** through the Sole Source Contracts Database (SSCD)



# Sole Source Exemptions

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- **Exemptions** to sole source filing and posting/advertisement:
  - Client service contracts (exempt from competition per RCW 39.26)
  - Qualified master contracts and direct-buy
  - Interagency/interlocal agreements (RCW 39.34)
  - Expert witness (**contracted by the AGO**)
  - Condition of funding (including collaborative research)
  - Maintenance of equipment if provided by original equipment manufacturer
  - Software maintenance from the software licensor
  - Utilities (garbage, heat, sewer, cable TV, power, water, etc.)
  - Others (**see Sole Source policy for complete list**)



# Sole Source Exemptions

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- **Exemptions** to sole source filing and advertisement/posting (cont.):
  - Agencies may request exemptions for **specific contracts** or **category of contracts**
    - Request must be in writing to DES Director
    - Must meet all other sole source requirements
  - **Higher Education only:** Contracts awarded from non-state funds
    - Defined as contracts where **over** 50% of funding comes from non-state funds



# Sole Source Steps

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## 1. **Post on WEBS** – Post for no less than 5 working days

### – Postings should include at a minimum:

- Brief scope of work
- Vendor name, contract value and period of performance
- Any options for extension
- **The criteria or rationale for making the sole source decision**
- Instructions to vendors – how to respond:
  - Who to contact with questions?
  - When are proposals or capability statements due?
  - What information should be included in the response?

### – **Agencies should develop a process for responding to all sole source inquiries.**

- Must respond to all vendor inquiries in writing
- If a vendor has the ability to perform the services, the agency should conduct a competitive procurement.

**(see Sample WEBS posting template)**



# Sole Source Steps

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2. Make all contracts/purchase documents available for **public inspection**
  - Post on agency website **at least 10-working days** prior to intended contract start date
  - May post notice and instructions on how to obtain a copy
- Filing in SSCD or posting on WEBS does not meet the public inspection requirement
  - SSCD is not open to the public
  - WEBS is a vendor notification tool



# Approval Prior to Work Beginning

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- RCW 39.26.140(2) require that *[DES] must approve sole source contracts before any such contract becomes binding and before any services may be performed or goods provided under the contract.*
- Approval is obtained by filing the sole source contract or amendment in the Sole Source Contract with the DES for approval.

## Contract Filing Language

- No contract so filed is effective nor shall work commence under it until the tenth (10th) working day following the date of filing **subject to DES approval.**



# Sole Source Steps

## 3. Agencies must submit to DES

- File in Sole Source Contracts Database (SSCD)



	State Agencies	Higher Ed
<b>Filing Period</b>	Not less than 10-working days	
<b>What To File</b>	Sole source contract greater than \$10K or \$13K and any subsequent amendments and justification <i>Note: If you received additional delegated authority or other exemption (ex. advertising), attach to filing.</i>	Sole source contract \$10K or greater that include state funds that are greater than 50% of the total consideration and any subsequent amendments and justification
<b>DES Action</b>	Approve or Disapprove	



# Sole Source Steps

## 3. Submit to DES (con't)

	State Agencies	Higher Ed
<b>Late Filings</b> (less than 10 working days)	<p>DES will:</p> <ul style="list-style-type: none"><li>• Designate as a “Late Filing” if the filing otherwise meets the requirements of a sole source</li><li>• Disapprove if the late filing does not meet the requirements of a sole source</li></ul>	
	<p>If agency chooses to proceed with a filing that has been <b>disapproved or deemed a “late filing”</b> it will be taken into consideration during the agency’s risk assessment and <b>could</b> affect their risk rating</p>	



# Sole Source Filing

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## ***What is the “ten-day filing period”?***

- Contract work can start on the **10<sup>th</sup> working day or the day of DES approval, whichever is later**
  - Working days’ for filing purposes excludes Saturdays, Sundays, and state legal holidays.
- MUST wait 10-working days even if DES approves early
- Doesn’t count the day filed/submitted to DES
- SSCD counts the ten working days; however, the **start date in SSCD must be real – it must match the start date in the contract!**



# Sole Source Filing

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Agencies must provide documented justification:

- Sole source **contract** justification questions (**see sole source contract justification handout**):
  - Business need or problem that requires this contract?
  - How did the agency conclude that the costs, fees, or rates negotiated are fair and reasonable?



# Sole Source Filing

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- Sole source **contract** justification questions (con't):
  - Unique features, qualifications, abilities or expertise of the contractor
  - Market research conducted to conclude that alternative sources were inappropriate or unavailable?
  - Detailed and compelling description of the costs and risks mitigated by contracting with this contractor
  - Special circumstances such as confidential investigations, copyright restrictions, etc.



# Sole Source Filing

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- Sole source **contract** justification questions (con't):
  - Unavoidable, critical time delays or issues that prevented the agency from completing this acquisition using a competitive process
  - Geographic limitations
  - Consequences of not having this sole source filing approved (include impact to the agency and to services it provides)
  - Considerations were given to providing opportunities in this contract for small business, including but not limited to unbundling the goods and/or services acquired?



# Sole Source Filing

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- Sole source contract **amendment** justification questions (**see sole source contract amendment justification handout**):
  - Rationale for amendment rather than competitive procurement – the business need.
  - Are good/services within the original scope?
  - Why were good/services were not included in original scope?



# Sole Source Filing

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- Sole source contract **amendment** justification questions (con't):
  - What conditions have changed? Other information that clearly justifies amendment decision.
  - Consequences if not approved (include impact to agency and to services it provides)
  - Are the rates the same?



# *Sole Source Filing*

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## **Amendments require filing if the original contract was filed except:**

- Administrative (technical) changes
  - Minor change to the contract such as contractor address change, deliverable due date change, clarifying but not changing contract language

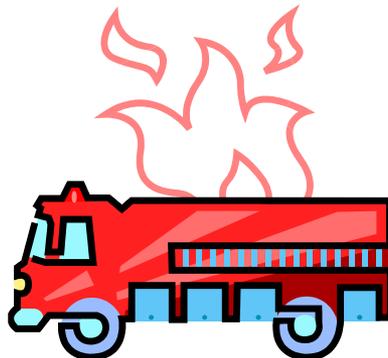


# Emergency

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Understand the **policy for emergency**  
procurements

DES-130-00



# Emergency

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Under **RCW 39.26.130**:

## Definition-

A set of unforeseen circumstances beyond the control of the agency that either:

- (a) Present a real, immediate, and extreme threat to the proper performance of essential functions; or
- (b) May reasonably be expected to result in material loss or damage to property, bodily injury, or loss of life, if immediate action is not taken.



# Emergency Steps

## Agencies must submit to DES

- File in Sole Source Contracts Database (SSCD)

	State Agencies	Higher Ed
<b>Filing Period</b>	3-working days after the start of work or contract execution, whichever is sooner	
<b>What to file</b>	Emergency contract greater than \$10K or \$13K and any subsequent amendments, justification and <b>memo approved by agency head</b>	Emergency contract \$10K or greater that include state funds that are greater than 50% of the total consideration and any subsequent amendments, justification and <b>memo approved by agency head</b>



# Emergency Steps

## Agencies must submit to DES

- File in Sole Source Contracts Database (SSCD)

	State Agencies	Higher Ed
<b>DES Action</b>	Review or Return	
<b>Return</b>	If the emergency contract is <b>not in compliance with the rules</b> it will be returned to the agency and the agency's use of emergency contracts will be taken into consideration when conducting the agency's risk assessment.	
<b>Late Filing</b>	<ul style="list-style-type: none"><li>• “Acknowledge” if the filing otherwise meets the requirements of an emergency.</li><li>• Return if the late filing does not meet the requirements of an emergency</li></ul>	



# Emergency Steps

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## Agencies must provide to DES:

1. Emergency **justification** questions (**see emergency justification handout**)
  - Nature of emergency
  - Health or safety threat:
    - What will happen if immediate action not taken. Estimate potential material loss.
    - How did the services of the contractor alleviate or eliminate the emergency.
    - Consequences if emergency action were not taken. Risks associated with inaction.
  - Contractor's qualifications
  - Reasonableness of cost
2. **Memo** must be attached to the filing with the agency head's signature (**see Notice of Emergency Purchase template**)



# Emergency Steps

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- **Transparency**
  - Either post the contract or information sufficient to provide someone instructions on how to obtain a copy on agency's website **for term of contract or 5 working days, whichever is greater.**
- **Limited duration**
  - Commensurate with the emergency
- **DES Master contracts** should be considered first



# *Sole Source and Emergency Filings*

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Separate Handout:

- Learn how to file sole source and emergency contracts and amendments in the new Sole Source Contracts Database (SSCD)
- Understand how DES analyzes and processes filings submitted through SSCD



# *Risk Management and Mitigation*

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Understand Risk and How to Mitigate It



# *Risk Assessment*

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Risk is dynamic and can change throughout the procurement process and the contract management and monitoring process.

- Pre-procurement risk assessment and management
- Procurement risk management
- Risk management during contract monitoring phase



# Risk Assessment

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- Pre-procurement:
  - Identifies and classifies risks of contracting
  - Measures the chance of harm or loss from contract activities
  - Determines:
    - What language to add to the contract
    - The amount and type of monitoring and/or auditing required



# *Risk Assessment*

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- Pre-procurement and procurement:
  - Things to consider:
    - Funding – amount and type
    - Complexity
    - Intended payment method
    - Procurement method – competitive or sole source
    - Contractor risks



# *Scope of Work and Payment Methods*

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**Understand How to Write a Scope of Work  
and Determine Payment Methods**



# Scope of Work

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- Provides clear direction to projects and project managers if they are to succeed.
- Sets the rules for the project once the key stakeholders formally agree to its content.
- Lists the goals, constraints, success criteria, and management guidelines.
- It clarifies responsibilities and actions of project stakeholders in a relationship



# Scope of Work

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- **Scope of work**
  - **Detailed and measurable aspects of performance – Performance-based**
  - Active voice--"the Contractor shall"
  - Specific due dates and time periods of performance
  - Results-oriented – deliverables
  - May incorporate bidder's proposal as attachment
  - Contract monitoring provisions: meetings, reports, staff assignments
- See Scope of Work Consideration Handout



# Scope of Work

Results of a poorly written Statement of Work...



"I agreed to guide you. My contract says nothing about pulling a sleigh."



# Payment Methods

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Agency should pay no more than what is a reasonable and fair price for the services.

## **RCW 39.26.180 (3) – Performance-Based Contracts**

To the extent practicable, agencies should enter into performance-based contracts.

- Performance-based contracts identify expected deliverables and performance measures or outcomes.
- Performance-based contracts also use appropriate techniques, which may include but are not limited to, either consequences or incentives or both to ensure that agreed upon value to the state is received.
- Payment for goods and services under performance-based contracts should be contingent on the contractor achieving performance outcomes.

**Lower Risk!**



# Other Payment Methods

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- **Cost reimbursement:** Higher risk for agency (budget) – reimburses contractor for all costs incurred under terms of contract. To prevent overpayment, clear line item totals need to be adhered to. Progress reports to substantiate payments.
- **Fee for service (time and materials):** Higher risk. Defined unit of service based on based on authorized rate (i.e. hourly rate). Should have a ceiling and frequent monitoring to make sure contractor is using time efficiently. Should have good idea in planning phase of time. Progress reports to substantiate payments.
- **Fixed price or lump sum:** Lower risk. Based on performance, if specific terms are not met, no pay.



# *Ethics in Public Contracting*

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**Understand Ethics in Public Contracting**



# Ethics

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Under RCW 42.52:

Ethics: Standards of professional conduct applicable to public stewards

Contract Ethics:

- No Conflict of interest.
  - Real or perceived gain or desire to influence
- Contract decisions to be based on merit.
- Contractor may not give gifts or anything of economic value to influence a state employee in an award decision. (RCW 42.52.150)
- Contracting with a current state employee.



# Ethics

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## Some important terminology:

**Transaction** – the procurement and purchase or contract

**Participation in a transaction** – includes approval, disapproval, decision, recommendation, the rendering of advice to decision makers

**Section 4 Employee** – an officer or employee of the State who regulates, or makes decisions about contracting or purchasing or participates in those regulatory or contractual matters with that person seeking to purchase services.

**Reasonable person standard** – focuses on the perception of others – not the employee's perceptions.



# Conflict of Interest

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## Conflict of Interest

Public employees must place the public's interest before any private interest or outside obligation - **choices need to be made on based on the merits.**

- Transparent, open and fair competition



# *Conflict of Interest*

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- Involves concepts of benefit and bias
  - Will your interest benefit from your contractual action?
  - Would a reasonable person conclude that a private or personal interest impairs your impartial or independent judgment in contracting?



# *Ethics*

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## **Conflict of Interest**

- **Incompatible activities**
  - **Outside employment**
  - **Volunteer activity**
  - **Ownership in private business**
  - **Relationships – business and personal**
- **May impair or conflict with your ability to make official decisions**



# Conflict of Interest

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## Financial Interests:

- If the contractual decision you make:
  - Puts money in your pocket
  - Puts money in the pockets of friends, family or others
    - Businesses in which you are a partner, board member, managing officer, or employee



You can't do it!



# *What if I have a Conflict of Interest?*

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- Full disclosure to supervisor or management
- Recusal

*To disqualify or seek to disqualify from participation in a decision on grounds such as prejudice or personal involvement.*

- Only recuse up
- Recusal must be complete



# Gifts

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## Section 4 Employees

- **Never accept a gift, gratuity, favor, or anything of value that could be reasonably expected to influence your contracting decisions, recommendations, advice, etc.**
- **Restriction applies to current or potential future Contractor .**



# *Ethics*

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## Contracting with Current State Employees

Special standards apply for all contracts with current state employees if the contract is awarded as a result of:

- a non-competitive process or,
- a competitive process in which the state employee is the only bid received

**Executive Ethics Board Approval Required!**



# Ethics

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## Questions?

- Contact your Agency Ethics Officer
  - Contact the Executive Ethics Board
    - Melanie deLeon, Executive Director
- [www.ethics.wa.gov](http://www.ethics.wa.gov)
- Attend the “Ethics in Public Service” class



# *Contract Management & Monitoring*

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Learn contract management and monitoring  
best practices



# *Contract Management*

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- Protect the public interest.
- Ensure quality and quantity of services contracted for are delivered - be proactive!
- Protect against waste, fraud, abuse, negative publicity.
- Mandatory for state agencies to follow guidelines.



# *Contract Manager “Don'ts”*

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- **Don't** begin work before the contract is executed; execute amendments before the contract expires.
- **Don't** change the scope of work, costs, period of performance without an amendment.
- **Don't** sign the contractor's contract form without legal review.



# *Contract Manager “Don’ts” - cont.*

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- **Don’t** direct the contractor to do work that is not described in the contract.
- **Don’t** authorize payment for work not performed satisfactorily.
- **Don’t** pay for the same service more than once.
- **Don’t** set deliverable due dates on or after the end date of the contract.



# *Contract Monitoring*

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**Contract Monitoring** is planned, ongoing, or periodic activity that measures and ensures contractor compliance with the terms and requirements of the contract.



# Contract Monitoring

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- Monitoring of the contract takes place after the contract is executed and work has begun.
  - Helps prevent non-compliance by identifying and resolving problems.
  - Enables agency to allocate appropriate resources based on pre-procurement and procurement risk assessment.
  - Dynamic – subject to change depending on changing risk factors
  - Must be documented
- Partner with other state agencies to monitor contractor, as appropriate.



# *Contract Monitoring*

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- Monitoring purpose – MITIGATES RISK!
  - Ensures the Contractor is:
    - Complying with the terms and conditions of the contract and applicable laws and regulations.
    - In compliance with contract special terms identifying and resolving potential problems.
    - Adhering to project schedule
    - Providing the quality of services expected.



# *Monitoring Activities*

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- Periodic contractor reporting.
- Agency review of audit reports: monitor corrective action.
- Invoice reviews: compare billings with contract terms and parameters.
- Periodic meetings – in person or telephone
- Conduct and document onsite reviews: test contractor knowledge of program.

**DOCUMENT, DOCUMENT, DOCUMENT!!**



# Corrective Action

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- Address deficiencies quickly;
- Always seek specialist advice regarding rights or actions
  - Contracts Consultant
  - AAG
- Document process fully.
- Withhold payment or terminate?



# Class Exercise

Term	Definition
Emergency	The division of work to be performed under a contract or subcontract in the completion of a project, typically broken out into specific tasks with deadlines.
Sole Source	Can change throughout the procurement process and the contract management and monitoring process.
Direct Buy	A procurement not requiring a competitive process
Risk Management	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 (best source) to provide the goods or services
Scope of Work	Present a real, immediate, and extreme threat to the proper performance of essential functions.



# Class Exercise

Term	Definition
Ethics	Includes monitoring contract relationship, addressing related problems, incorporating necessary changes or modifications in the contract, ensuring both parties meet or exceed each other's expectations, and actively interacting with the contractor to achieve the contract's objective(s).
Conflict of Interest	Standards of professional conduct applicable to public stewards.
Contract Management	The act of obtaining or buying goods and services. The process includes preparation and processing of a demand as well as the end receipt and approval of payment.
Procurement	Based on a risk assessment process, the Department of Enterprise Services specify restrictions as to dollar amount or specific types of goods and services to state agencies.
Delegated Authority	A situation that has the potential to undermine the impartiality of a person because of the possibility of a clash between the person's self-interest and professional interest or public interest.



# Class Exercise - Answers

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# Questions?

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- If we do not have time or were unable to answer your question(s) today, please email us:

**[des.contracting@des.wa.gov](mailto:des.contracting@des.wa.gov)**

- Please also visit the **Procurement Reform** website:

**<http://des.wa.gov/about/pi/ProcurementReform/Pages/default.aspx>**



# DES Agency Contracts, Consulting & Oversight (ACCO)

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# *Want credit for this class?*

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- This is not a required course but you can receive credit for attending by **completing the evaluation**
- Some credit will be given towards the official training program
- **Email your evaluation to**

**[des.contracting@des.wa.gov](mailto:des.contracting@des.wa.gov)**

***Your feedback is needed and appreciated!***



# *Final Contracts Words of Wisdom*

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- Use critical thinking and good decision-making skills.
- Exercise sound judgment and create solid business solutions.
- Use well-reasoned risk taking.
- WRGC - Write really good contracts.
  - Understand the implication/impact of the clauses contained in the contract.
  - A good contract means we get what we need.

