



Purchasing & Contracting in Washington State; A Resource Guide for Executives

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Disclaimer:

At the time of this publication March 30, 2015 all materials and RCW's referenced are current. Updated course work will be made available if and when revisions are needed. As always, confirm current RCW references.

Washington State Executive Management Purchasing & Contracting Resource Guide

This document is a companion to the Purchasing & Procurement for Executives and Managers training course. It is intended to provide at-a-glance definitions, tips, and other resources for Washington’s Executives, Managers, and Administrators understand how purchasing and procurement works in Washington State.

Remember too, that when it comes to purchasing and contracting in your agency, your Procurement Professional is one of your most important resources.

Purchasing & Contracting Responsibilities

The following section identifies the key purchasing, procurement, and contracting responsibilities of executives, managers, and administrators.

Agency Executive Responsibilities	DES Responsibility
<ol style="list-style-type: none"> 1. Provide strategic vision and support for key procurements 2. Executive Sponsorship 3. Signature Authority ultimately responsible for the contract 	<ol style="list-style-type: none"> 1. Development and oversight of policies related to state procurement and contracting.

Purchasing & Contracting Law (RCW 39.26)

The following section identifies essential purchasing and contracting laws and includes highlights and key aspects of [RCW 39.26](#) and what this means to executives, managers, and administrators.

Highlights:

- Charges the Department of Enterprise Services (DES) with oversight of state procurement of goods and services – including delegation of authority, discussed earlier
- Requires procurements to be based on a competitive solicitation ([RCW 39.26.125](#)) process, with exceptions.
- Requires transparency to ensure the highest ethical standards, proper accounting for contract expenditures, and ease of public review of contract and procurement documents
- Goods / Service Contracts – Professional or technical expertise provided by a consultant to accomplish a specific task or seeks routine services offered for sale by a supplier and required by an agency to continue necessary functions.
- IT Goods & Services – All major IT investments are subject to the approval and oversight of the Office of the Chief Information Officer (OCIO). The OCIO is responsible to define what constitutes a major IT investment.
- Client Service Contracts – Services provided directly to agency clients. For example, medical and dental services, employment and training programs, residential care, and subsidized housing.
- Delegated Authority – By law, each agency is subject to a risk assessment. The results of the risk assessment determine an agency’s level of delegated authority to purchase, procure, and contract for goods and services.

Key Aspects of RCW 39.26

The table below provides at-a-glance information about the key aspects of RCW 39.26.

Table 1: RCW 39.26 At-A-Glance

Element	RCW 39.26 Requirement	What This Means to You
Contract Reporting	<u>RCW 39.26.210</u> - All state agencies and higher education institutions must annually submit a list of all contracts to DES.	Agencies are required to annually submit a list of contracts to DES no later than September 1. Ensure your agency has a reliable contract-tracking tool to meet this requirement.
Delegation of Authority	<u>RCW 39.26.090 / DES Policy #090-00</u> - provides for DES to establish delegation of authority to state agencies for the procurement of goods or services.	Delegated authority must be based on a periodic risk assessment conducted by DES. Be aware of your agency's risk assessment results and level of delegated authority. Higher Education authorizing statute RCW 28B.10.029.
Ethics	<u>RCW 39.26.030</u> - As a state officer or employee you are a steward of state resources and therefore held to ethical standards upheld by the public will.	Ensure agency employees understand ethics with regard to procurements per <u>RCW 42.52</u> .
Performance Based Contracting	<u>Executive Order 10-07 / RCW 39.26 180</u> - Directs state cabinet agencies to meet performance-based contracting standards in all new contracts for products and services, and to review existing contracts prior to renewal and update as necessary to reflect these standards.	To the extent practicable agencies should enter into performance-based contracts. Not every contract can be performance based – it's important to consult with your agency procurement professional or DES.
Public Notice	<u>RCW 39.26.120</u> - Purchases of or contracts for goods and services must be based on a competitive solicitation process and may include electronic or web-based solicitations, bids, and signatures.	Current tool for public notice: Washington Electronic Business Solution (<u>WEBS</u>)
Risk Assessment	<u>RCW 39.26.090</u> - Delegation policies must be based on a risk assessment process in order to receive delegated authority from DES.	Risk assessments are based on these four areas: <ul style="list-style-type: none"> • Leadership • Resources • Objectives • Procurement Processes <p>The lower your risk-level the more delegated authority you'll receive.</p>

Element	RCW 39.26 Requirement	What This Means to You
		Institutions of Higher Education are not required to undergo a risk assessment in order to purchase or contract for goods or services.
Training	RCW 39.26.110 - Beginning July 1, 2015, no agency employee may execute or manage contracts unless the employee has met the training or certification requirements or both as set by the department. Any request for exception to this requirement must be submitted to the director for approval before the employee or group of employees executes or manages contracts.	Professional well-trained staff = lower risk for the state. Your staff who purchase, procure, and contract for goods and/or services will be trained on Washington's most current laws, policies, and best practices.

Types of Purchases & Contracts

Purchasing - The process of obtaining goods and services for the State of Washington in accordance with chapter 39.26 Revised Code of Washington (RCW) or 'Purchase' means the acquisition of goods or services, including the leasing or renting of goods.

Procurement - The combined functions of: identifying needs, initiating a procurement project, selecting a vendor, contracting with a vendor, purchasing of the goods or services, managing the resulting contract, and using goods and/or deploying services provided by a non-State entity on behalf of the State.

The following table provides a snapshot of the types of purchases and contracts, a definition, when you should use which, and considerations for each.

Table 2: Types of Purchases and Contracts

Type	Definition	When to Use	Considerations
Competitive Procurements RCW 39.26.120	A competitive procurement is a documented formal process providing an equal and open opportunity to bidders and culminating in a selection based on predetermined criteria.	All contracts must be entered into pursuant to competitive solicitation, except for: <ul style="list-style-type: none"> • See entire list of Exceptions RCW 39.26.125 	<ul style="list-style-type: none"> • May include electronic or web-based solicitations, bids, and signatures. • DES Competitive Procurement Standards – Standard Terms & Conditions
Convenience Contracts	A convenience contract is a contract	<ul style="list-style-type: none"> • For specific goods and/or services 	A convenience contract is not

Type	Definition	When to Use	Considerations
<u>RCW 39.26.070</u>	for specific goods or services, or both, that is solicited and established by the <u>department agency</u> on behalf of and for use by a specific agency or group of agencies as needed from time to time.	<ul style="list-style-type: none"> • Solicited by the agency 	available for general use and may only be used as specified by the <u>department agency</u> .
Cooperative Purchasing Agreement <u>RCW 39.26.060</u>	A cooperative purchasing agreement for the procurement 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.	<ul style="list-style-type: none"> • May include, but is not limited to, joint or multi-party contracts between the entities, and master contracts or convenience contracts that are made available to other public agencies. • All cooperative purchasing must be through contracts awarded through a competitive solicitation process. 	<ul style="list-style-type: none"> • Does the cooperative agreement meet statutory requirements? • Has a Master Contracts Usage Agreement (MCUA) been signed and submitted to DES?
Direct Buy Purchases <u>Policy # DES-125-03</u>	A procurement not requiring a competitive process equal to or less than \$10,000/\$13,000 agency or higher education threshold.	<ul style="list-style-type: none"> • Under \$10,000/\$13,000 • Limited to a single purchase • No competition is required • Agency discretion 	<ul style="list-style-type: none"> • <u>RCW 28B10.029</u> Higher Education has individual spending threshold • No bundling or splitting • Exempt from sole source requirements
Emergency Purchases <u>RCW 39.26.130</u>	To qualify as an emergency procurement there must be the presence a real, immediate, and extreme threat to the proper performance of essential functions; or may reasonably be expected to result in material loss or damage to property, bodily injury, or loss of	<ul style="list-style-type: none"> • Meets legal requirements: presents a real, immediate, and extreme threat to essential functions or, May reasonably result in material loss or damage. 	<ul style="list-style-type: none"> • Emergency Purchases are exempt from competitive solicitation • Understand and follow required filing steps

Type	Definition	When to Use	Considerations
	life, if immediate action is not taken.		
Qualified Master Contracts <u>RCW 39.26.080</u>	A contract for specific goods or services, or both, solicited and established by the department on behalf of and for Washington State agencies.	<ul style="list-style-type: none"> • <u>General use for goods and/or services</u> 	<ul style="list-style-type: none"> • Available through Qualified Master Contracts Database? • Institutions of Higher Education are not required to use a qualified master contract. • Institutions of Higher Education consider this a Convenience Use Contract.
Small Purchases	Any procurement not exceeding a given upper monetary limit. Usually applies to purchases of small dollar amounts under a certain monetary threshold.	<ul style="list-style-type: none"> • Small dollar amount • Informal solicitation • Below the threshold value • Low-risk 	<ul style="list-style-type: none"> • Small \$ Amount • May be Informal Solicitation • Below threshold value • Low Risk
Sole Source Contract <u>RCW 39.26.140</u>	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.	<ul style="list-style-type: none"> • Verify if contract meets definition of sole source • Verify a competitive process is not warranted • Confirm sole source documentation used to initiate DES approval process 	<ul style="list-style-type: none"> • What is the business need • Are costs, fees, or rates reasonable • Unique qualification of contractor Special Circumstance • Geographic limitations • Unavoidable, critical time delays • Consequences if not approved

Risk Mitigation in Purchasing and Procurement

The following table identifies common risk areas throughout the following purchasing, procurement, and contracting categories and ways to mitigate/avoid them:

- Purchasing & Procurement
- Contract Execution
- Contract Management

Table 3: Common Risk Area Risk Types

Risk Type	Mitigation Opportunities
Planning	<ul style="list-style-type: none"> • Staff training - Ensure your agency has highly qualified procurement and contract professionals by requiring and supporting training. • Labor relations - Determine early if the procurement impacts labor relations. • Conflict of interest - Establish procedures to identify staff with a conflict of interest, and keep it updated. • Source of funding - Be aware of any additional requirements tied to the source of funding.
External Environment	<ul style="list-style-type: none"> • Vendor Availability - The goal is to get the best value at the best price with the best contract terms favorable to the state and that minimize risks to your agency. • Protest - Know your agency's and the State's protest law and timelines. The best way to prevent a protest is to make sure the evaluation process is followed. • Media attention - Have a solid communication plan and approach in place to avoid unwanted media attention.
Processes	<ul style="list-style-type: none"> • Planning - Don't wait for an issue to happen. Have a documented strategy and process for potential escalation of contract issues – during the planning stage. • Documentation - Make sure the culture and accepted approach is to DOCUMENT EVERYTHING, including phone calls, and other verbal communications. • Timeline - Defining the high-level functions included in procurement, high-level project scope, and timeline are needed to ensure: <ul style="list-style-type: none"> ○ An agency thinks through the work breakdown structure (the tasks and resources needed) and; ○ An agency has all the information they need to describe the best solution (service or product) to meet project needs. • Requirements/Statement of Work - Specifications can be more strict than they need to be. This often results in less competition and higher costs. On the other side, not enough requirement details and “Under-specification” also results in continual quality problems. Items may meet specifications but do not work in the desired application. Statement of Work (SOW) documents produce these important benefits and can reduce risk when well-written: <ul style="list-style-type: none"> ○ When multiple vendors look at well-written requirements it should result in an "apples-to-apples" comparison, which makes evaluation easier. ○ When requirements are well-defined, project risks are decreased. • Evaluation Process - It's important to adhere to the legal, ethical, and standard evaluation practices including: <ul style="list-style-type: none"> ○ Technical ○ Management ○ Product Demonstration ○ Cost ▪ Contract Manager Transfer - Best practices to transition from one

Risk Type	Mitigation Opportunities
	contract manager to another include overlap and knowledge transfer meetings. If documentation is up-to-date it's easier for the new contract manager.
Communication	<ul style="list-style-type: none"> • Contractor Communication - Conduct regular communication meetings and avoid unclear communications by asking clarifying questions and providing feedback. • Transparent Reporting - Ensure the status and performance of the contract and information is made available to all stakeholders and for public access as required by law/executive order. • Public Perception - Have a solid communication plan and approach in place to avoid unwanted media attention. Follow your own processes and procedures.
Performance	<ul style="list-style-type: none"> • Performance Standards - Understanding the performance standards and expectations in the contract and of the vendor will ensure the monitoring activities are focused on the right thing. • Contractor Non-Performance - Contractor non-performance or not meeting performance standards does happen and good monitoring should identify that before it becomes a problem or issue. • Scope Creep - Scope creep can come from the vendor and from the agency SME's, so be aware and mitigate.
Contract Agreements	<ul style="list-style-type: none"> • Contract Review - There need to be time and adequate resources to review the contract. • Verbal Agreements - Don't do them, everything should be in writing.
Contract Execution	<ul style="list-style-type: none"> • Contract Signatures - Ensure you have formal signature designation (backup) authorities in place.
Kick-Off	<ul style="list-style-type: none"> • Payment - A standard contract provision is that there is no payment for work performed before the signed contract is executed. • Pre-Contract Work - Have policies in place and communicate clearly: never start work before contract is signed and do not "verbally agree" to allow vendor to do that. • Contract Management - Have a plan in place to effectively manage the contract throughout the lifecycle. Conducting pre-planning activities through contract monitoring are essential aspects of effective contract management and may help mitigate risk.

Resources at Your Fingertips

DES Contacts for Help with Purchases, Procurements, and Contracts

Use the space below to write down the name and contact information for the purchasing, procurement, and contracting professionals in your agency.

DES Contacts	Contact Name & Information
Agency Procurement Lead	
Agency Purchasing Lead	
Agency Contract Specialist	

Human Resources	
Others	

DES Procurement Training Contacts

The following section identifies DES training contacts and their information.

Training Contacts	Training Contact Information
Cheryl A. Shaw	Contract and Legal Services Training Manager, DES 1500 Jefferson St SE Olympia, WA 98504 (360) 407-9376
Melanie Buechel	Senior Contracts Consultant, DES 1500 Jefferson St SE Olympia, WA 98504 (360) 407-8156
Others	

Procurement Policy Resources

The following table provides consolidated information and links applicable to agency executives, managers, and administrators. The table provides the titles for key laws, policies, and supporting resources, the link to the website, and a short list of topics covered by resource.

Table 4: Procurement Policy Resources

Law or Policy	Title	Links	Topic Examples or Purpose
Revised Code of Washington (RCW)			
RCW 39.26	<i>Procurement of Goods & Services</i>	http://apps.leg.wa.gov/RCW/default.aspx?cite=39.26	Delegated Authority, Training Requirement, Types of Contracts, Risk Assessment, purchasing, procurement, and contracting definitions.
RCW 28B.10.029	<i>Independent Purchasing Authority for Institutes of Higher Education</i>	http://apps.leg.wa.gov/rcw/default.aspx?cite=28B.10.029	Higher Education authorizing statute.
RCW 43.19	<i>Department of Enterprise Services</i>	http://app.leg.wa.gov/rcw/default.aspx?cite=43.19	Department of Enterprise Services authorizing statute.
RCW 42.52	<i>Ethics in Public Service</i>	http://app.leg.wa.gov/rcw/default.aspx?cite=42.52	Activities incompatible with public duties, employment after public

		<u>42.52</u>	service, gifts, use of persons, money, or property for private gain, special privileges.
RCW 39.34	<i>Inter Local Cooperation Act (Interagency Agreements)</i>	http://app.leg.wa.gov/rw/default.aspx?cite=39.34	Permits local governmental jurisdictions to cooperate with other localities for mutual advantage to provide services and facilities.
RCW 41.06.142	<i>Purchasing services by contract – Criteria to be met – Bidding – Definitions</i>	http://app.leg.wa.gov/rw/default.aspx?cite=41.06.142	Any department, agency, or institution of higher education may purchase services including those customarily provided by employees in classified service, by contracting with individuals, nonprofits, businesses, employee business units, or other entities if certain criteria are met.
RCW 39.80	<i>Contracts for Architectural and Engineering Services</i>	http://app.leg.wa.gov/rw/default.aspx?cite=39.80	Governmental agencies publicly announce requirements for architectural and engineering services and to negotiate contracts based on demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.
DES Policies			
DES Policies	<i>Contracting & Purchasing Policies, Training, and Resources</i>	http://des.wa.gov/services/ContractingPurchasing/Pages/default.aspx	<ul style="list-style-type: none"> • Policy # DES-090-00 – Delegation of Authority • Policy # DES-125-03 - Direct Buy Procurements/Purchases • Policy # DES-130-00 – Emergency Purchases • Policy # DES-140-00 - Sole Source Exemptions • Policy # DES-170-00 – Complaints and Protests • Policy # DES-210-01 – Agency Contract Reporting
OCIO Policies			
OCIO Policies	<i>OCIO Policy Manual</i>	https://ocio.wa.gov/policies	<ul style="list-style-type: none"> • OCIO Policy Manual 121 – IT Investments – Approval and Oversight • OCIO Policy Manual 141 – Securing Information Technology Assets

Other Supporting Policy and Industry Standards Resources

Table 5: Supporting Policy and Industry Standard Resources

Resource	Title	Link	Topic Examples or Purpose
Policy	<i>Office of Minority and Women's Business Enterprises (OMWBE)</i>	http://omwbe.wa.gov	The Office of Minority and Women's Business Enterprises (OMWBE) is the sole certifying agency for minority, women, and disadvantaged small businesses in Washington State.
Industry Standards	<i>NIGP Code of Ethics</i>	http://www.nigp.org/web/StartPage.aspx?Site=NIGP&webcode=abt-codeofethics	The Institute for Public Procurement (NIGP) develops, supports and promotes the public procurement profession through premier educational and research programs, professional support, technical services and advocacy initiatives.
Policy	<i>OFM SAAM Manual</i>	http://www.ofm.wa.gov/policy/SAAM.pdf	The State Administrative & Accounting Manual, also known as SAAM, provides control and accountability over financial and administrative affairs of the state of Washington, and assists agencies in gathering and maintaining information needed for the preparation of financial statements.



Contact Us By Phone

For questions, feel free to contact us by phone at 360-407-2200.

Locations & Directions

Our headquarters office is at 1500 Jefferson, on the Capitol Campus in Olympia, Washington. DES operations are also located throughout the state.

[Enterprise Services headquarters at 1500 Jefferson Building](#)

[Other Enterprise Services locations](#)

DES Headquarters at 1500 Jefferson Building

The headquarters of Enterprise Services is the 1500 Jefferson Building, which will also serve as the state's new data center. The building is part of state government's historic Capitol Campus and is the newest structure built on the grounds since 1992.

Mailing Address

Washington State Department of Enterprise Services
PO Box 41 401 Olympia, WA
98504-1401

Physical Location

1500 Jefferson Street SE Olympia, WA 98501 - [Map](#)