

Transcript for October 3, 2023 Lunch 'n Learn meeting

[This transcript was edited for accuracy and clarity.]

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Zavatsky, Drew (DES)

Hi my name is Drew Zavatsky. I'm with the Department of Enterprise Services. I am in the Policy Team and am the administrator for the State Procurement Risk Assessment. With me today is Bernadette Connor and Zoë Mroz, and I'll let each of them introduce themselves.

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Mroz, Zoe (DES)

Hi, I'm the Management Analyst for the Policy Team. I'm here to help assist with the Q&A, so I'll be monitoring the chat throughout this entire presentation. If you have any questions that you want us to address during or after the presentation, please enter them in chat and they will be recorded and answered. Bernadette?

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Connor, Bernadette (DES)

Slide 2 Hi there. My name is Bernadette Connor. I am an Enterprise Contract and Procurement Specialist on the Small Agency Team. Before joining DES, I had a 15-year career working as a corporate attorney for small businesses, which were overwhelmingly, if not exclusively, women- and minority-owned. So, I am really excited to go in and talk about something that I am very passionate about, which is contracting and language that makes things more accessible for small businesses.

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Zavatsky, Drew (DES)

Slide 3 Thank you. Let's get started. Those of you who have been to some of the earlier lunch and learns will see some familiar slides. As an overview, DES is the state of Washington's lead procurement agency. We were given that role in the Procurement Reform Act way back in 2012. Our agency procures and manages around 200 statewide contracts, with around 1500 vendors. We're also responsible for developing and implementing procurement policies and procedures for all Washington state agencies, and that's why we're here today.

Slide 4 A couple of statutes direct us to do things like develop procurement policies, procedures, and materials to encourage and facilitate state agency purchases of goods and services from small businesses here in Washington state. Specifically, another statute says – it's the middle one here in the slide – that we're seeking to increase commerce with small businesses, micro businesses and mini businesses as well as minority-owned businesses, and women owned businesses to the maximum extent practicable.

Slide 5 And then there's also an executive order that came out earlier this year, Executive Order 22-01. The Equity in Public Contracting order talks about increasing commerce with, among other things, small and veteran vendors. The 2019 Disparity Study basically said that Washington state has a big problem

because as is quoted here, these groups do not enjoy equal access to all aspects of state contracting opportunities.

We need remedies.

And so that's what this lunch and learn is about. A DES-recommended best practice is to review vendor requirements so that they are no greater than necessary to protect the state's interests. And we'll hear some specific examples of exactly what we're talking about.

Slide 7 So this is what the supplier diversity policy looks like. That link is active. It's up on our website. I'm not going to speak on it because the assumption is that everybody participating today is fully aware of it and instead want some questions on how to implement it. But if you do have questions about this policy or procedure, reach out. We're more than happy to discuss all of this stuff. You can either contact me by phone, teams, email all that good stuff.

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Connor, Bernadette (DES)

Slides 8 So the Supplier Diversity Handbook, which I hope you all have had a chance to look at, really has a ton of excellent, excellent tools to use sort of from the start to finish on inclusivity for including, and doing outreach for, small and veteran-owned businesses. So, we're going to move along here to my wheelhouse, solicitation and contract language.

Slides 9-10 In this slide, this is an overview of what you see when you click on that button in the handbook, so it gives you step by step the actions to take, and some examples of the issues and barriers that we identified at the time that the handbook was drafted. In this case, the solicitation language has been identified as a primary barrier that prevents small and veteran owned business from having equal access to state opportunities.

If you're a smaller business, you don't have the staff for the manpower necessarily to go through and to read everything or even be familiar with how the process is done. So, improving the language helps provide equity, not just equality, and helps agencies comply with the policy, which is really important. And it does have the effect of supporting local business by keeping money within Washington.

Slide 11 So the handbook provides great resources including contract language, best practices as well as templates for solicitations and contracts. The templates should be very helpful for anybody who would like assistance or examples. So, I'm not going to bore you by going over the list of the common barriers. You have probably had a chance to look at that already. Instead, we're going to move along and discuss some new and novel barriers that have cropped up since the implementation of the process.

Slide 12 So the first question, you know, are you requesting bidders to be of a certain size?
It's possible that a project requires a certain capacity. However, we should always double check that we aren't imposing arbitrary requirements that de facto disqualifies small businesses because they just don't have the staff or the revenue to respond to a solicitation.

The second question, you know, are your solicitations, and/or sample contracts too long?
I think all of us have looked at a wall of text and kind of mentally given up on reading through everything. Our brains just kind of shut down when there's just too much information to process and the vendors are no different, so the performance requirements as well as the questions for written responses should be concise and specific.

Third, are you asking for insurance requirements or unnecessary requirements?

This should align with the project or the service being solicited. We recently had a solicitation that required commercial auto insurance, but the auto part of that wasn't going to be used for another two years, and that was an issue for a few of the small firms that had been on the contract.

Fourth. So, circling back to the second point about the wall of text for portions of solicitations and contracts that may affect the bid. It can be hard to tell what's important to the soliciting agency if you [the vendor] are presented with a wall of text. We suggest, specifically, to call out and highlight in different sections of the solicitation the most important items you want vendors to address in their bid. We also suggest that these items be put into a specific slide in the pre bid meeting presentation, as well as the exhibit C cost sheet in your solicitation.

Fifth, are your solicitation interview questions relevant and that's necessary and drafted at the time that solicitation was written?

So not only is it really important to avoid bias, but it equally important to avoid the appearance of bias. Having interviews to check "fit" or to see if the contractor gets it already kind of sounds like bias. In this case, if you don't have any questions that need to be answered in an interview, it's probably best to take those questions and find a way to have a written response for it. Usually, asking for written responses can be more fairly and evaluated free of bias.

And finally, Sixth rather than a question, it's more of a sort of helpful hint to help your bidders. We suggest that you include a bid proposal checklist that they could have on hand to go through to make sure they have everything to be submitted for their bid. We think it's especially helpful for new vendors who have never done this before.

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Zavatsky, Drew (DES)

That #6 kind of links with #4 pretty nicely, because the checklist can help identify to vendors what the most important things are that they need to work on in preparing their bid. You can also highlight what you are looking for from bidders by separating out general and special terms and putting the special terms first. This is a way to emphasize for the vendor community specifically what your agency is looking to purchase. Your general contract terms are a secondary sort of consideration.

It also means that the vendor doesn't have to wade through pages and pages and pages of general terms to get to something where they realize Oh, I can't even provide this service. So, it is a time saver potentially.

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Connor, Bernadette (DES)

Thank you for mentioning that. Now would be a good time to move over and give that little sample of what that checklist could look like, which is the next slide.

Slide 13 So there's your example of the checklist contents that we have here. I do love your idea about pointing out specific terms first.

I think it's time for your questions. Drew?

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Zavatsky, Drew (DES)

So thank you all for your attention so far. At this point, I'm going to turn it over to Zoe, who has been tracking both the Q&A and also the chat.

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Mroz, Zoe (DES)

So we've got a couple questions, but again, I just want to invite everyone to use the chat to share if you've got any questions specific to your agency, specific to your situations, or where are the areas where you're having trouble implementing this part of the supplier diversity policy?

What are the challenges that you're facing? What are the barriers or roadblocks that are happening in your agency that we can talk through and try and solution or provide suggestions or you know, I'm seeing some dialogue in the chat between others that that's exactly what this space is for. So, we have a question that I can answer really quick.

Question #1 Will these slides be shared after the meeting.

Answer #1 Yes, they will be as well as the transcript and the Q&A will all be shared.

Question #2 I was told that all sections of the bid document are important. Are you saying we should mark or note which sections are more important than others? I should add early in my career, I did highlight a few sections and I was told not to highlight or draw attention to any section.

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Zavatsky, Drew (DES)

Answer #2 So full disclosure, Bernadette and I are lawyers. So, we may have a difference of opinion, but we're just playing to type. You know the main lawyer response to most things having to do with procurements is "it depends." Any single hard and fast rule is probably not wise in a subject matter area where there's a high premium on using critical thinking skills. So sometimes it makes a lot of sense to highlight things that you are looking for in a particular solicitation and to help vendors out. Other times it makes no sense at all.

I can think of an example where it makes perfect sense, which is in a very complex procurement where there's a lot of background information needed to understand what the agency is actually asking for. But if what you're actually asking for is relatively straightforward, you can certainly highlight that and put it up front. Other times where the good or service is straightforward – not complex – it doesn't make sense to highlight. However, no matter the complexity, it is a best practice to include a summary of what you're looking for at the very beginning. That's been my experience.

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Connor, Bernadette (DES)

This situation came up specifically with a solicitation that I worked on. There was a secondary cost that was an important consideration for the agency that a couple of bidders hadn't seen. The secondary costs were buried pretty deep in the contract. So in instances like that where you know we expect delivery and the cost of delivery to be considered in the bid pricing, but it's only mentioned once in small print on page 12 – in that case, it is appropriate to highlight the item: "by the way, on this page to the

solicitation, this is the thing that we're asking for, and that should be either within your capacity to make the deliveries or to have that noted in your bid price.

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Zavatsky, Drew (DES)

Yeah, somebody said this to me a long time ago: "don't write a solicitation as a treasure hunt for vendors." Instead, it should be like it's a newspaper. You want vendors to see the headlines so that they'll read further, you know, to the important stuff.

Question #3 Solicitation interview questions, are those bidder conference questions? Bernadette, do you want to talk a little bit more about your commentary on whether interviews should be part of a solicitation process?

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Connor, Bernadette (DES)

Answer #3 So in this case it is not the bidder question, it's where the top bidders will be invited to do an interview or a demonstration. So, in instances where the agency is buying a product like software, it makes sense to have a demonstration because you may have an amazing bid with an amazing price. But if your software isn't compatible with your agency's network, we want to know that. In cases where you are buying services, if you are soliciting to have somebody come and restructure your organization, it would make sense to do a demonstration interview to meet with the people to ensure that they can work with your agency. But in instances where you are hiring somebody to deice your sidewalks, an interview would be unnecessary because you don't have to have follow up questions for deicing a sidewalk.

When you do have some questions that you have ahead of time and they cannot be answered in a solicitation, then it does make sense to ask for a demonstration; in a bid response you can't say show me that your software works. You would need to see that, but in other instances where it's not really relevant to what's being requested, there is no value in going an interview or demonstration. Drew, do you have anything to add?

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Zavatsky, Drew (DES)

Just to piggyback on what you were saying. A theme that came up when we were reviewing feedback questions to the Virtual handbook was to ask, "what am I trying to accomplish with a particular solicitation?" and therefore, what is necessary here? Or am I doing things by rote?

So: if your solicitation process template says to do an interview, don't just do an interview. Instead, ask yourself, are you getting any value out of it? Are the vendors able to display anything in an interview, or in a demonstration, that helps you decide which vendor to choose? And sometimes it's just simply not necessary. And the same goes for almost every single type of language or clause or requirement that can go into a solicitation.

If it's not necessary, don't put it in there.

It's really a critical thinking exercise. If you don't need it, don't use it because it's not going to help anybody.

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Mroz, Zoe (DES)

Just a reminder to those who are popping in and out, if you have any anything to share with regards to solicitation, contract, language struggles, barriers, specific instances where you or your agency is having trouble identifying what barriers might be existing, please feel free to share those in the chat and we can talk about them.

Question #4 We've got another question from it looks like Megan Clark who asks "for small agency assistance, DES typically provides documents like templates or example documents for solicitations and contracts. Do you know if those documents are being updated to include information from the Supplier Diversity Policy and Handbook?"

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Zavatsky, Drew (DES)

I believe they have been updated.

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Connor, Bernadette (DES)

Correct. But the difficulty with templates is that they are designed to be one size fits all; that means that you need to review the documents and edit the parts that aren't necessary. So as of right now, everything is pretty thorough in terms of, you know, having language in there for demonstration, slash interviews and stuff like that. And it really is largely up to the agency to go through and assess whether or not a particular clause is necessary. If you come to the small agency team for help, it's me that will go through and just cut out the unneeded language. And if you would like more information, please email me and I'd love to help you.

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Mroz, Zoe (DES)

Yeah, it does sound like critical thinking is a necessary step when using templates; they are there as a resource.

Question #5 Where are the templates located?

Answer #5 Here is that link: <https://www.des.wa.gov/services/small-agency-support/contracts-and-procurement-support>.

We also have our contract liaison services page on the DES website:

<https://www.des.wa.gov/purchase/how-use-statewide-contracts/contract-liaison-services>.

I don't know if any of you were happened to be in the internal processes workshop last week with OMWBE, but Ernesto Perez on our team went through each of these phases that are on that web page (the six phases of the procurement process: Planning, Solicitation Development, Posting, Evaluation, ASB and Award, and Administration). There are templates associated with every phase of the process, and our contracts liaisons are more than happy to help large agencies. And we've also got our small agencies services team that specifically helps the small agencies.

Question #6 Megan says as a side question somewhat related to templates: are the contractor requirements for access equity use going to be added to the templates?

Answer #6 0:24:29.710 --> 0:24:31.80

Zavatsky, Drew (DES)

That's a great question. As soon as OMWBE finalizes their requirements, we will work on updating our templates. Megan, if you email me your question directly, I'll talk to the folks over at OMWBE and we will get you a direct answer to that.

Question #7 0:31:34.840 --> 0:31:43.290

Mroz, Zoe (DES)

Julie is asking if we have any words of wisdom to help the internal contracting staff to understand the importance of this policy as a whole? Bernadette, you talked briefly in the beginning about vendors that are new to working with the state that struggle to understand (and respond) when they look at these documents. Do you want to talk a little bit more about that and why the policy is a good thing? It's not just more work for our contracting staff.

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Connor, Bernadette (DES)

Answer #7 I definitely hear that. I came in about a month before the policy took effect and I did definitely see that there was a reaction that "I don't want to see a huge amount of new work." Well, if you care about participation of small businesses in the state, and diversity, and working with veteran-owned businesses – it's hard to understand that attitude. My own bias on this is for small businesses, for people who are sole proprietors, or who run it with their family to be able to participate in the stream of commerce and to be successful. In terms of why it should be important to other people in terms of the work, I guess that is a value that you have or you don't – and it is a value that Washington state has: to encourage everyone's participation in commerce. If you believe that small business is the lifeblood of America, then this is how we help it thrive.

Also, I do think that for competition, the more robust your bidding pool is, the more likely you are to have a better selection in order to do get the best value for the state. For example, what if you only have three big bidders that respond to a solicitation? That's your pool, and you've limited yourself to these big competitors whose work maybe you don't even like that much. Those are your limited options. But if you remove those barriers, you make it more accessible for smaller businesses, then you can end up with a vendor pool of 15 or 16 or 25. That usually results in a better pick for the state. You get better prices. You are in a better position to negotiate to look for value added. It's good for small business, good for Washington, good for people, good for families, good for the economy.

So, think of it as, "more work on the front end for better results in the back end." Drew, do you have other thoughts?

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Zavatsky, Drew (DES)

I agree. Here is one of the things I think about: I was a kid in elementary school and remember when the teacher would come out with an afternoon snack, orange slices or whatever. And all the kids were acutely aware of who was getting the best slice. It's human nature, right? But every kid got a slice. And every kid agreed that that was fair. We all would have preferred to be Joe, because Joe got the biggest slice, but at least everybody got a slice.

Here is what the disparity study said: there are a lot of kids that are not getting a slice.

It's just not right. We're trying to make that right with this policy. The message in the policy is coming from the Governor and the Legislature.

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Mroz, Zoe (DES)

Question #8 We have another question from Catherine who asks when a large vendor subcontracts to a diverse vendor. Did I hear that you don't currently track that?

Answer #8 It's not that we don't track it, but that we don't have a formal way that we're collecting subcontractor data statewide. That is what Access Equity is going to be doing.

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Zavatsky, Drew (DES)

That's exactly correct. You know, many, maybe even most agencies have ways that they track subcontractor spend, but it's not uniform. So yes, we're working on it.

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Mroz, Zoe (DES)

Absolutely, because subcontractor spend is important, especially as we're talking about that being one of our strategies for spreading the orange slices around.

Alright, so I want to just sort of take a last call for questions since we've been winding down.

We have a comment from Teresa: "From my perspective, this policy helps address the system that generally and often unintentionally supports the dominant culture, and this tries to ensure that everyone is given an opportunity to play." Yeah.

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Connor, Bernadette (DES)

Teresa, I want to put like 17 hearts on that. Thank you.

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Mroz, Zoe (DES)

Question #9 OK, Catherine has a question about NASPO contracts.

"The vendors are usually big corporations. Are there plans to add diverse vendors when NASPO does not have any?"

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Zavatsky, Drew (DES)

That's a great question that I do not have an answer to. I will take it to Elena McGrew, who oversees the whole Statewide Contracts section of our office and get you an answer. It will appear in our transcript of this session. It'll be part of the Q&A that we end up producing after this session, by the way.

Thank you, Zoe, for pointing out that we are doing those three documents, the PowerPoint presentation, the transcript, and a Q&A from this Lunch 'n Learn. It will be released anywhere from 6 to 8 weeks after the session. The documents will be available on our website, in a very similar setup as the June Lunch 'n Learn materials.

I want to say a big thank you to everybody for participating today, for your attention and your excellent questions.

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Mroz, Zoe (DES)

Our session next week is subcontractor inclusion plans. We hope to have some subcontractor answers for you and talk about Access Equity a bit.

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Zavatsky, Drew (DES)

I hope I'm not speaking out of turn, but I believe one of our guests next week has a really good subcontractor-related practice to share with all of you that her agency is currently doing. A teaser.

Have a fantastic rest of your day. We will see you soon.