



Washington State
**DEPARTMENT OF
ENTERPRISE SERVICES**

SUPPLIER DIVERSITY – POLICY EXCEPTIONS

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PRESENTERS

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OVERVIEW



- Department of Enterprise Services (DES) is the state's lead procurement agency.
- DES also procures and manages around 200 statewide contracts with around 1,500 vendors.
- DES is responsible for developing and implementing procurement policies and procedures for Washington agencies.

STATUTORY DIRECTIVE



RCW 39.26.005

Legislature intends that the state develop procurement policies, procedures, and materials that encourage and facilitate state agency purchase of goods and services from Washington small businesses.



RCW 39.26.090

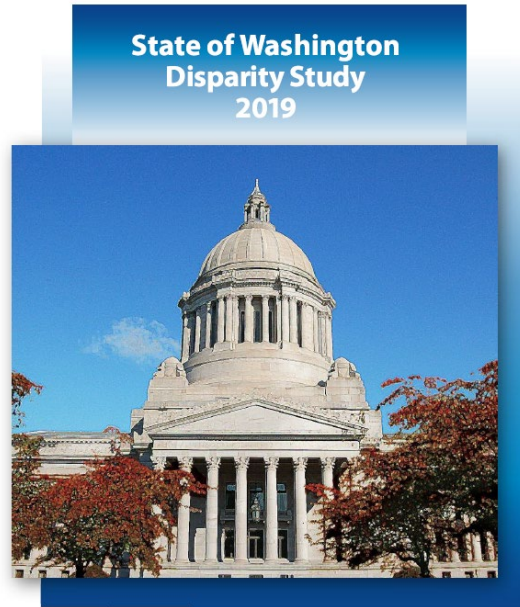
Developing procurement policies and procedures, that encourage and facilitate the purchase of goods and services from **Washington small businesses, microbusinesses, and minibusiness, and minority and women-owned businesses** to the maximum extent practicable . . .



Executive Order

EO 22-01: Equity in Public Contracting requires cabinet agencies to use the Tools for Equity to improve the scope and equity of public spending in Washington

2019 DISPARITY STUDY



“ . . . Minorities and White women do not enjoy equal access to all aspects of State contracting opportunities . . . Some remedial action is warranted and necessary to ensure non-discrimination in State contracting.”



SUPPLIER DIVERSITY POLICY

SUPPLIER DIVERSITY POLICY

- Enterprise Services Policy No. [POL-DES-090-06](#) – Supplier Diversity
 - Effective April 1, 2023
- [Supplier Diversity Virtual Handbook](#)



Enterprise Services Policy No. POL-DES-090-06

Supplier Diversity

Applies to: Any procurement by the executive and judicial branches of state government, including state agencies, departments, offices, divisions, boards, commissions, institutions of higher education as defined in [RCW 78B.10.015](#) and correctional and other types of institutions ([RCW 39.26.010\(1\)](#)) ([RCW 39.26.100](#)) ([RCW 39.26.102](#)) governed by RCW 39.26.

Authorizing sources:

- State Law [RCW 39.26.090\(6\)](#)
- State Law [RCW 39.26.005](#)
- State Law [RCW 39.26.240](#)
- State Law [RCW 39.26.245](#)
- State Law [RCW 39.26.160\(3\)\(b\)](#)
- State Law [RCW 43.60A.200](#)
- State Law [RCW 39.26.010](#)
- [Executive Order 19-01](#)
- [Executive Order 22-01](#)
- [DES Policy 210-01](#)

Related sources:

- [Executive Order 05-03](#)

Effective date: April 1, 2023

Last update: N/A

Sunset review date: 5 years from Effective date

Approved by:  Tara C. Smith, Director

Reason for Policy

The Legislature has directed the Department of Enterprise Services to develop procurement policies and procedures that encourage and facilitate the purchase of goods and services from Washington small businesses, microbusinesses, minibusinesses, diverse, and veteran-owned businesses to the maximum extent practicable. Supplier diversity adds value such as innovation, quality improvements, efficiencies, and cost savings.

The purpose of this policy is to ensure that all procurement professionals and those with acquisition responsibilities use approved, legally compliant strategies that encourage and facilitate the purchase of goods and services from small, diverse, and veteran-owned businesses to the maximum extent possible. Agencies must take action to remove barriers that prevent small, diverse, and veteran-owned businesses from receiving equitable access to state goods and services procurements.

SUPPLIER DIVERSITY EXCEPTIONS

- D-1 – Statewide Contracts, DES Approved Cooperative Contracts
- D-2 – Emergency Contracts
- D-3 – Contracts that Violate International Trade Agreements
- D-4 – Contracts Using Federal Funds
- D-5 – Request to Support a Business Need

D-1 STATEWIDE / COOPERATIVE CONTRACT CONSIDERATIONS

- Statewide contracts generally an exception because DES has already conducted the solicitation in compliance with SDP
- When DES approves a cooperative contract, it assures that the contract complies with WA policies, including SDP
- Wrinkle: two-tier contracts
 - Although DES has created a pool of vendors (e.g. ITPS), an agency conducting a competitive solicitation the pool must still comply with the forecasting and outreach portions of the SDP

D-2 EMERGENCY CONTRACT CONSIDERATIONS

- An exception because DES acknowledges that procurement rules should not impede emergency responses by agencies
- Emergency events are unforeseen circumstances beyond the control of the agency that either:
 - Present 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 life, if immediate action is not taken.

D-3 – CONTRACTS THAT VIOLATE INTERNATIONAL TRADE AGREEMENTS

- How to know if a solicitation will be a violation: check current trade agreements examples include:
 - GATT (General Agreement on Tariffs and Trade)/WTO (World Trade Organization)
 - NAFTA (North American Free Trade Agreement)

| NAFTA: | Supply Contract (equal to or exceeding) | Service Contract (equal to or exceeding) |
|----------|---|--|
| —Canada* | \$25,000* | \$83,099* |
| —Mexico | \$92,319 | \$92,319 |

D-3 – CONTRACTS THAT VIOLATE INTERNATIONAL TRADE AGREEMENTS - EXAMPLES

| Trade Agreement | Supply Contract (equal to or exceeding) | Service Contract (equal to or exceeding) |
|--|---|--|
| WTO GPA | \$183,000 | \$183,000 |
| FTAs: | | |
| Australia FTA | \$92,319 | \$92,319 |
| Bahrain FTA | \$183,000 | \$183,000 |
| CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua) | \$92,319 | \$92,319 |
| Chile FTA | \$92,319 | \$92,319 |
| Colombia FTA | \$92,319 | \$92,319 |
| Korea FTA | \$100,000 | \$100,000 |
| Morocco FTA | \$183,000 | \$183,000 |

D-4 – CONTRACTS USING FEDERAL FUNDS

- Why an exception?
 - Federal funds often have a requirement to follow federal procurement law and/or regulations. These federal rules may preclude the Supplier Diversity Policy
- What to do?
 - Explain why the exception applies to the contract in the contract file

D-4 – CONTRACTS USING FEDERAL FUNDS – SOME DETAILS

- **Geographical preferences may not be used when utilizing Federal funding**
 - Excludes the usage of Washington Small Business
 - WEBS utilizes definition of small business as located in WA State
 - Excludes usage of veteran preferences
 - WEBS utilizes Veteran owned as registered with WA DVA
- **Requirement located in:**
 - 2 CFR Subpart D - Post Federal Award Requirements
 - Procurement Standards (§§ 200.317 - 200.327)
- **2 CFR 200.317 Procurements by states.**
 - When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds.
- **2 CFR 200.319(c)**
 - “The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.
- **To do:** Document why the exception applies to the contract in the contract file

D-5 – REQUEST TO SUPPORT A BUSINESS NEED

- DES has received one formal request from an agency. It was withdrawn.
- One informal request was presented. It too was withdrawn.
- Key consideration: the requesting agency must answer this question:
 - Why is the exception necessary for the agency to fulfill its mission?
- Best practice: consult with the DES Policy Team for next steps

QUESTIONS

THANK YOU



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