



# Scope of Small Business Use and Spending Rulemaking

Title 200 WAC

## Rulemaking purpose

Rulemaking will put in place a program that supports Washington state strategies to improve agency use and spending with small businesses and meet requirements in state law ([RCW 43.19.725](#) and [43.19.727](#)). It will:

- Lay out a clear process to verify that benefits are going to small businesses as intended, including a standard, progressive compliance process.
- Make sure in-state businesses have increased opportunities for contracts under statewide procurement policies.
- Support existing strategies encouraged by the statewide [Supplier Diversity Policy](#) — such as preference points and reserved bidding and awards — to boost use of Washington small businesses.
- Enhance reporting on small business use in state contracting.
- Formalize existing strategies into small business program.

## Scoping



To make sure that the rulemaking will meet its intended purpose, DES has analyzed related issues and decided whether to address them in the written rule, in the implementation of the new rule, or if they fall outside the scope of the rule.

### Key



-  Written rule  
  Implementation  
  Out of scope

### Topics

#### Formal small business model plan and program

-   The rule will formalize a small business model plan and program that state agencies including DES will follow. The Department of Transportation, colleges, or universities may choose to follow or develop their own. This will meet requirements in state law.

#### Pathway to declare a small business

-   How the business will declare that it is small. This process needs to be improved from the current self-certification in WEBS.

### Pathway to verify small business status

**R** **I** How DES will verify that the business' declaration is true, before awarding any small business contracts, preference points, or other benefits.

### Actionable, progressive compliance measures including progressive penalties

**R** **I** The rule will outline progressive compliance measures that DES can act on. Current law allows penalty of perjury, but this is impossible to enact under the current self-certification process, and difficult to pursue generally. It is also not progressive with the scale of the offense.

As part of the compliance measures, the small business program will promote compliance through scalable penalties that match the scale of the offense. The rule will list what those include.

### Business appeal process

**R** **I** Every compliance program should have a process for businesses to appeal compliance decisions. The rule will create those.

### Requiring small business use and spend goals

**R** **I** The rule will require small business goods and services use and spend goals for state agencies.

### Compliance measures for meeting small business use and spend goals

**R** **I** The rule will also include compliance measures for state agencies setting up and meeting small business use and spending goals.

### Clarify and align definitions


**R** **I** There are many terms that have slightly different definitions in the contracting and supplier diversity space in Washington state. The rule will clarify and align definitions for:

- Small businesses (eligible for these advantages)
- Declaration
- Verification
- Certification
- Model plan
- Model program
- Penalty


- Measure
- Suspension
- Debarment

DES may find the need to define other terms over the course of the rulemaking.


Giving technical help to small businesses and state agencies

-  DES does not intend for the rules to add new technical help requirements. However, in implementing the rule changes, DES will provide technical aid to small businesses navigating the bidding process and state agencies implementing the rule.


Finding policy development and procedures connected to this rule and environment

-  As part of rulemaking, DES will evaluate what other connected statewide procedures and policies may need to be updated to enact the new rules. Those changes will fall under implementation, and may generate additional bodies of work, but will be part of the written rule.


Connecting compliance and accountability to delegation of authority process

-  DES will consider how to implement compliance with small business use and spend goals for agencies in their delegated authority requests.


Making changes to existing OMWBE, DVA, or Federal certifications

-  DES has no authority over existing small and diverse business certifications and will not be pursuing any changes to existing certification processes.


Making changes to race or gender neutral contracting requirements

-  DES cannot consider race or gender in public contracting activities. There are limited exceptions such as situations where use of federal funds require minority or gender preferences in the awarding of state contracts. The rules will not change these requirements.

Make changes to public works contracting

-  This rule is limited in scope to goods and services contracting methods and does not apply to contracting under public works authority, including alternative public works methods like small works roster and JOC contracting.

Change direct buy limits

-  This rule will not make any changes to goods and services direct buy limits.

## Summary

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Pathway to verify small business status		
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Business appeal process		
Requiring small business use and spend goals		
Compliance measures for meeting small business use and spend goals		
Clarify and align definitions		
Giving technical help to small businesses and state agencies		
Finding policy development and procedures connected to this rule and environment		
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Making changes to existing OMWBE, DVA, or Federal certifications		
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Making changes to public works contracting		
Changing direct buy limits		