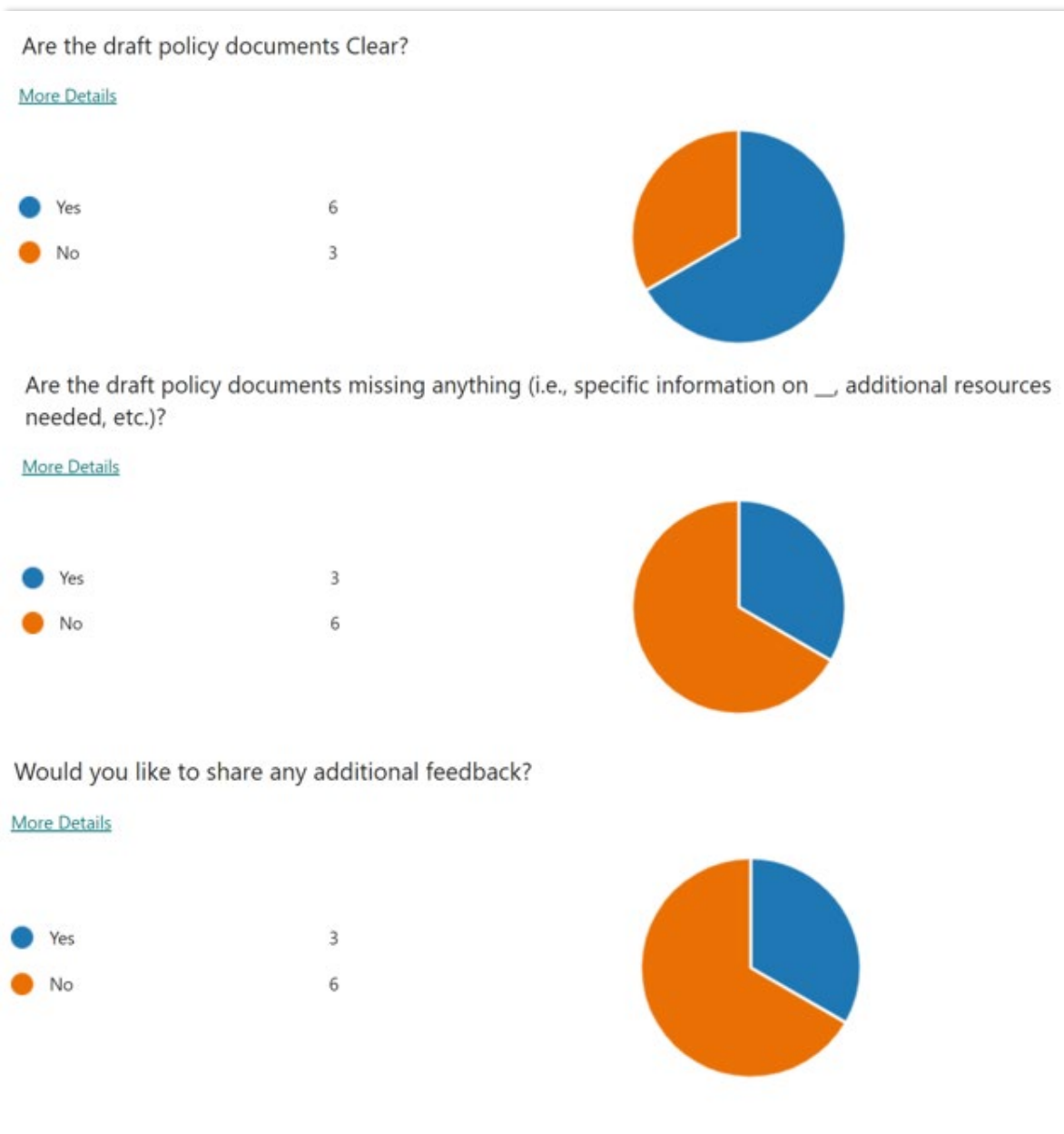




Convenience Contracts – New Policy FEEDBACK ANALYSIS

Feedback Themes

*The graphics below are from the feedback survey and do not include feedback received during the April 4, 2024, workshop.



Are the policy refresh documents clear? If no, please explain.

Feedback	DES Response
<p>I find it strange to define "convenience contracts" as contracts established by a group of agencies. I believe most people view convenience contracts as simply contracts that are made in which goods/services are utilized on an as-needed basis instead of doing a new contract every time the good or service is needed, and that's how the previous policy defined these contracts. Defining a convenience contract as one that is established by a group of agencies unnecessarily creates some confusion about convenience contracts used by a single agency, and this confusion was reflected in the questions during the policy meeting. Why not remove the "established by a group of agencies" language from the definition and elsewhere in the policy state that it only applies to convenience contracts established by a group of agencies?</p>	<p>Thank you for your feedback. As part of the legislation that passed, effective June 6th, the language regarding single agencies' utilizing convenience contracts was removed from the definition. Beginning June 6th, the law will only apply to convenience contracts where multiple agencies are involved. This new policy reflects the updated language of RCW 39.26.070.</p>
<p>Under Policy Section D "substantially increases the value of the contract". Can DES give an example of "substantially increasing the value of the contract"? Does "substantially" equate to 30% increase in value? 20% or less?</p>	<p>Thank you for your feedback. This language is from RCW 39.26.120(2):</p> <ol style="list-style-type: none"> (1) Insofar as practicable, all purchases of or contracts for goods and services must be based on a competitive solicitation process. This process may include electronic or web-based solicitations, bids, and signatures. This requirement also applies to procurement of goods and services executed by agencies under delegated authority granted in accordance with RCW 39.26.090 or under RCW 28B.10.029. (2) Subsection (1) of this section applies to contract amendments that substantially change the scope of work of the original contract or

	<p>substantially increase the value of the original contract.</p> <p>We interpret substantially to mean if the change results in a higher dollar amount and/or additional scope in goods/services that could be a potential opportunity for other bidders to bid on; and/or if the changes might result in other bidders' interest that might not have been there with the original solicitation, then the change is considered significant and may need to be done outside the original contract (new contract done competitively or through an exception), which DES would need to be part of that decision.</p> <p>Agencies are directed to use their discretion and good, sound judgment when making this decision.</p>
<p>It's not clear if an agency can create acquisitions for multiple vendors to use as needed (that isn't available through a DES Statewide Contract)?</p>	<p>Thank you for your feedback. As part of the legislation that passed, effective June 6th, the language regarding single agencies' utilizing convenience contracts was removed from the definition. Beginning June 6th, the law will only apply to convenience contracts where multiple agencies are involved. The new policy reflects the updated language of RCW 39.26.070.</p>

Are the draft policy documents missing anything (i.e., specific information on __, additional resources needed, etc.)? If yes, please explain.

Feedback	DES Response
<p>What if its Sole Source AND Convenience?</p>	<p>Thank you for your question. We have added an FAQ to cover additional requirements for sole source convenience contracts.</p>
<p>Outline the policy on appeals if DES does not approve the convenience contract between two agencies. Agencies should have clear expectations and steps to follow in the event that a convenience contract is denied.</p>	<p>Thank you for your feedback. DES is committed to working with each agency to find an agreeable resolution to every request. If there is a situation where a convenience contract is not appropriate, DES staff will work with the agency to strategize an alternative solution to meet its business needs.</p>
<p>Please clarify the difference between Memorandum of Understanding (MOU) between agencies and convenience contracts. It appears that an agency can do an MOU to use another agency's contract but can't tag on to convenience contracts.</p>	<p>Thank you for your question. Memorandum of Understanding (MOU) and Interagency Agreement (IAA) arrangements are between two or more agencies. An MOU should be used when there is no exchange of money. Convenience contracts are used when two or more agencies want to establish a joint contract with a private vendor.</p> <p>We are currently working on guidance around the interpretation of interagency agreements (including MOUs), under RCW 39.34, and how that plays with RCW 39.26 and convenience contracts.</p> <p>Agencies cannot piggyback onto another contract, unless the solicitation/contract included language allowing for other agencies to utilize the resulting contract.</p>

Additional Feedback?

Feedback	DES Response
<p>Appreciate the exclusion of single-agency contracts from the definition of "convenience contracts" in the revised RCW.</p>	<p>Thank you for your feedback.</p>
<p>May want to specify who the request for approval needs to come from that goes to DES for a sole source--if it's up to each agency, stating that would be helpful to avoid confusion.</p>	<p>Thank you for your feedback. We have added an FAQ to cover additional requirements for sole source convenience contracts.</p>
<ol style="list-style-type: none"> 1. Most of the language tracks with statute change per HB 1471. 2. Clarifies that only applies to ones involving multiple agencies. 3. Appreciate formal process with list of specific questions to present for approval. Better than current process which can be unclear and uncertain what the expectation is. 4. Suggest, per comments in workshop, to allow for agencies to join a convenience contract after its signed. Not a reasonable expectation that agencies are going to spend hours searching WEBS for solicitations for convenience contracts they could join in on (especially since they are not identified specifically as such in WEBS screens). 	<p>Thank you for your feedback.</p> <p>Regarding the suggestion in item 4, agencies are not able to join an existing convenience contract. As part of the convenience contract approval process, the requesting agency must specify the list of agencies that will be participating. The list of participating agencies is included in the solicitation or notification process. We have added a new FAQ addressing this.</p>

April 4, 2024, Procurement Risk Assessment Workshop - Q&A

Question	DES Response
Does this policy cover higher ed - colleges and universities?	Thank you for your question. Institutions of Higher Education (IHEs) can choose to use DES' procurement policies. However, in accordance with RCW 28B.10.029, IHEs can also develop their own purchasing policies and procedures provided that the policies and procedures comply with RCW 39.26.
Lead time: business or calendar?	Thank you for your question. The 10 days lead time is business days.
So the request is made after the solicitation? What happens if DES disapproves?	Thank you for your question. We recommend engaging DES as early as possible, in the solicitation development phase, to avoid delays.
10 days prior to the contract start date? Don't you want to see it before the agencies decide to do a Convenience Contract procurement?	Thank you for your question. Please note that the 10 business days' lead time is a recommendation, not a requirement. We recommend engaging DES as early as possible, in the solicitation development phase, to avoid delays. However, we understand that there may be circumstances such as exemption or sole source situations where the timelines are shorter, and we are requesting that agencies give DES a minimum of 10 business days to review requests.
Will the request for approval need to come directly from Agency Director to DES Director?	Thank you for your question. No, it does not need to be a formal director-to-director correspondence. We have our point of contact is the Director of Contracts and Procurement, which currently acting is Rebecca Linville is our point of contact for those request letters. On the agency side that could be sent by your procurement lead, your administrative lead, or your agency lead, we leave that up

	to your agency to determine who that letter should come from.
Is this process only for convenience contracts supporting multiple agencies? What if it will only support one agency?	Thank you for your question. As part of the legislation that passed, effective June 6th, the language regarding single agencies' utilizing convenience contracts was removed from the definition. Beginning June 6 th , the law will only apply to convenience contracts where multiple agencies are involved.
On average, how many requests from agencies does DES receive a year?	DES received 2-3 convenience contracts requests per year during 2019-2022. However, our team has seen an increase in requests and inquiries about convenience contracts during the last year; there have been seven requests in the last six months.
Are convenience contracts going to be posted somewhere so other agencies can see what is out there?	Thank you for your question. DES is not planning to have these posted at this time; however, we appreciate your suggestion and will consider this as a future enhancement.
Would this policy impact creation of Interagency agreements beyond the procurement stage?	<p>Thank you for your question. No, this policy does not impact Interagency Agreements (IAAs). However, we are currently working on guidance around the interpretation of interagency agreements, RCW 39.34, and how that plays with RCW 39.26 and convenience contracts.</p> <p>This policy is specifically to address the approval process when two or more agencies are interested in developing a joint contract with a private vendor.</p>
What is the process for a convenience contract to support one agency now vs after June 5?	Thank you for your question. The process is informal (not in policy) but very similar to what is being proposed in this policy, Please reach out to DES Policy for assistance with

	requesting a convenience contract prior to June 6th.
Forgive me if this is in the materials you shared prior to the meeting, but can agencies join a convenience contract AFTER it's been put in place or are they required to be involved in the initial solicitation?	Thank you for your question. Agencies are not able to join an existing convenience contract. As part of the convenience contract approval process, the requesting agency must specify the list of agencies that will be participating. The list of participating agencies is included in the solicitation or notification process. We have added a new FAQ addressing this.
Is it possible to provide an internal list of pending convenience contracts so that other agencies could consider if they too want to join?	Thank you for your question. At this time, we are not planning to publish a list of pending convenience contracts. Please note that convenience contracts are meant to be competitively solicited, so one of the best resources that we already have available for finding out if somebody is thinking of or contemplating doing a convenience contract is to check WEBS.
Can an agency be added to an existing convenience contract?	Thank you for your question. Agencies are not able to join an existing convenience contract. As part of the convenience contract approval process, the requesting agency must specify the list of agencies that will be participating. The list of participating agencies is included in the solicitation or notification process. We have added a new FAQ addressing this.
Did I hear correctly that agencies cannot enter into a single convenience contract on their own. Did you say that they have to be with more than one agency joined together?	<p>Currently, the law states that for single agency or a group of agencies, you must request to DES permission.</p> <p>By June 6th, the "single agency" piece is being removed from the statute. So, the law will only apply it to multiple agencies, which will need a request permission from DES.</p>

	<p>And actually, after June 6th, if you are a single agency, there is no more convenience contract. That's not part of the definition of a convenience contract going forward.</p>
<p>If there is a convenience contract out there and your agency wants to participate, what would that process look like, do you have to go through process again?</p>	<p>Thank you for your question. Agencies are not able to join an existing convenience contract. As part of the convenience contract approval process, the requesting agency must specify the list of agencies that will be participating. The list of participating agencies is included in the solicitation or notification process. We have added a new FAQ addressing this.</p>
<p>Is it possible to provide an internal list of pending convenience contracts so that other agencies could consider if they too want to join?</p>	<p>Thank you for your question. DES is not planning to have these posted at this time. We recommend reaching out to other agencies with similar missions and/or business needs and searching WEBS open solicitations for opportunities.</p>
<p>Higher Ed has designated purchasing authority in RCW and already has a database of contracts that any of the colleges/universities can join. Does this have any impact on that?</p>	<p>Thank you for your question. Institutions of Higher Education (IHEs) can choose to use DES' procurement policies. However, in accordance with RCW 28B.10.029, IHEs can also develop their own purchasing policies and procedures provided that the policies and procedures comply with RCW 39.26.</p>
<p>For example: a convenience contract exist that says " members of SBCTC" the SBCTC is made up of 34 CTC, could any of those 34 colleges still use the contract?</p>	<p>Thank you for your feedback. Yes, provided that all 34 college members are listed in the request letter to DES and specified/made clear (i.e., listed) in the solicitation posted to WEBS.</p>
<p>What is the process to clarify why a master contract doesn't meet the need?</p>	<p>Thank you for your question. Agencies are directed to use their discretion and good, sound judgment when making this decision. For example: the product does not meet the required performance specifications, the contractor's delivery time does not meet</p>

	<p>the agency's needs, the agency requires different terms (i.e., warranty provisions or insurance requirements), etc. In addition, all agencies have been encouraged to increase spending with certified small and minority-, women- and veteran-owned businesses. If a diverse spend option is not available on a statewide (formerly master) contract and an agency has identified a diverse spend option that meets its needs and complies with all procurement rules, then the agency would be justified to purchase outside of a statewide contract or DES-approved cooperative contract. The reasons justifying the off-contract purchase should be documented.</p>
<p>Is there a way to add language to a Convenience Contract when awarded, that may allow other agencies to join in in the event of an amendment? What about some general language? Agency xyz and any other agencies to be named at a future date via a contract amendment? et all.</p>	<p>Thank you for your question. Agencies are not able to join an existing convenience contract. As part of the convenience contract approval process, the requesting agency must specify the list of agencies that will be participating. The list of participating agencies is included in the solicitation or notification process. We have added a new FAQ addressing this.</p>