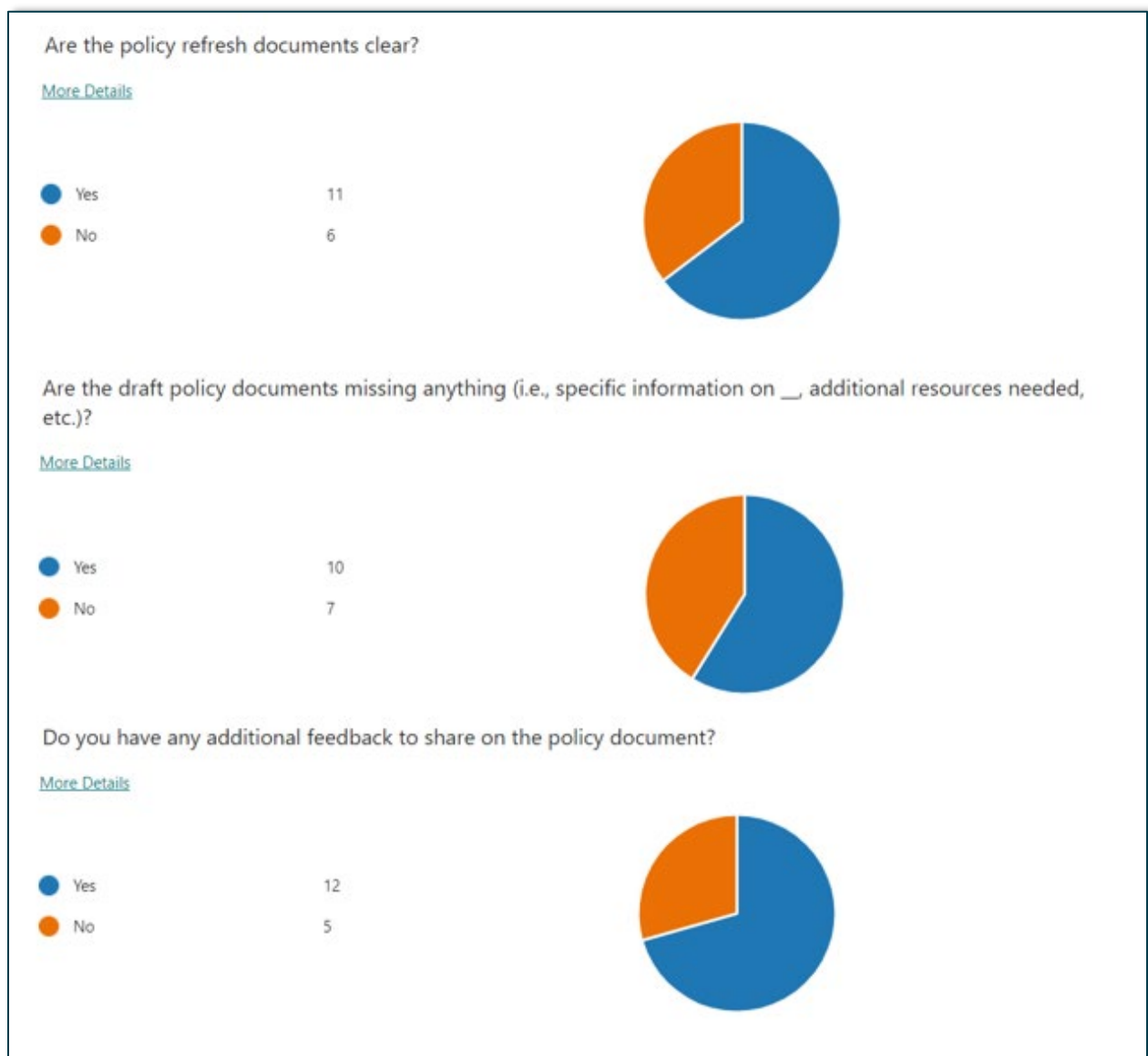




Sole Source FEEDBACK ANALYSIS

Feedback Themes

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



Themes identified:

- ❖ Exemptions
- ❖ Transparency
- ❖ Delegated Authority
- ❖ WaTech Requirements
- ❖ Why/Benefits of Changes
- ❖ Sole Source Amendments
- ❖ Capability Statement Review
- ❖ Market Research
- ❖ Filing Sole Source Exemptions
- ❖ Supplier Diversity
- ❖ Resources
- ❖ Agency Workloads
- ❖ Feedback process

*Of the themes of feedback received, the most common themes were 1. Exemptions; 2. Capability Statements; 3. Market Research; and 4. Filing Sole Source Exemptions.

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

Feedback Theme: Exemptions	DES Response
<p>Exemption #12 – If my agency hires a consultant to provide professional training specifically for my agency, does that fall into an exemption? If not, why?</p> <p>Based on previous conversations with DES, my understanding of #12, is that the specific examples are exemptions because they're not goods or services over which the agency can exert control, but that's never been stated in the exemption and still isn't stated in this revision. If it's DES' intent to limit only to those goods services over which the agency cannot exert control, then why not say that or something to that effect? I don't think it's appropriate to point to examples as the sole reason that an agency cannot, for example, hire a consultant for professional development. DES never states that the examples are the exclusive examples, and while the examples do point to goods/services that are not within an agency's control the rest of the text doesn't support the limited concept</p>	<p><u>If the training is to enhance a WA state employee's work performance and/or career development, then this would be included in the professional development exemption. The definition of professional development has been modified in the Glossary supplement to clarify.</u></p>

<p>that the examples seem to portray, leaving an agency to wonder whether or not the examples were purposely chosen to identify services beyond an agency's control or not.</p>	
<p>Exemption 12) What about contract vendors and volunteers that are conducting state business for the agency that are required to attend specific conferences and seminars?</p>	<p><u>Modified definition for Professional Development.</u></p>
<p>Exemption 12) now 11). Why is cable television being removed? This is a standard utility charge for in-patient facilities. Also, utilities "such as" are just examples and shouldn't be considered an all-inclusive list, as there are other items coded as utility charges for our facilities that are not on this list.</p>	<p><u>When this exemption was originally created, streaming was not very common for a source of television. Today there are countless competitors and ways you can receive cable/TV/Subscriptions/etc.</u></p>
<p>Exemption 13) now 12). We have temp staff at our facilities under contract such as nurses and doctors, who are required to comply with all required training. We can't exclude temp staff under contract in this manner. This is not in compliance with CMS requirements and regulations and is very problematic.</p>	<p><u>Modified definition for Professional Development.</u></p>
<p>"Section 5 – Exemptions, #19: Goods and/or services when the providing entity has a copyright, trademark, or proprietary documents/data and there is no authorized reseller(s) or comparable good/service as documented through market research."</p> <p>Issue: In this situation, DES will be stepping in to make business decision for agencies. If an agency decides that it wants to use a particular contractor, a trainer for instance, who has copyrighted materials, this addition to the policy would allow DES to step in and tell the agency that the training they want is not appropriate and that they should choose a different training.</p>	<p><u>We have excluded this new proposed exemption in the final policy.</u></p>

<p>I just have one small item for your consideration regarding the Sole Source updates on this new exception. As an end user, selfishly I LOVE it lol but I figured I'd share that I think it would be really easy for us to apply this very broadly to basically any SaaS purchase 😊 I think the intent makes great sense – like right now we have OPIS reporting, where they are the only entity out there that nationally compiles and owns the rights to the fuel pricing data, so it would fall nicely under this exemption. But without further expanding on what we mean by 'comparable good' I can see that I can make a case for a certain SaaS for example for case management, and it's just unique enough, and unlike any other case management solution out there, even though there are probably something close enough in functionality.</p> <p><i>Goods and/or services when the providing entity has a copyright, trademark, or proprietary documents/data and there is no authorized reseller(s) or comparable good/service as documented through market research.</i></p>	
<p>Cooperative agreement</p> <p>a. Why is this written to match statute RCW 39.26.125 when that statute as a whole is categorically already exempt? Redundant.</p>	<p><u>This was already removed in the draft policy? Not sure what was meant by this.</u></p>
<p>Why now limited to collaborative research with vendors identified in grant / legislation? I thought the reason collaborative research was identified in section 5 in addition to RCW 39.26.125 was to allow for collaborative research where agencies work together to come up with a research project and identify potential contractors as a "collaborative" effort?</p> <p>Section 5.(9) is a substantial change to the previous sole source policy, previously 5.(10)</p>	<p><u>Thank you. Modified the exemptions list.</u></p>

<p>“Contracts related to collaborative research.” What is the reason for this change? f. If it is determined that section 5.(9) should remain in the DES policy, please explain how this is different from section 5.(6). g. If it is determined that section 5.(9) should remain in the DES policy, under section 5.B., why is it required to file in the SSCD a collaborative research exemption “for the record” if those are already exempt under RCW 39.26.125(11)?</p>	
<p>Under section 5.(9), why is this exemption listed in this sole source policy when it is substantially the same as RCW 39.26.125(11)? Should this be removed from the sole source policy? Confusion having this in both places given concerns in the requirement to post in SSCD all exemptions except those listed in RCW 39.26.125 Per section 5(1).</p>	<p><u>Thank you. Modified the exemptions list.</u></p>
<p>Question about collaborative research. The same exemption is listed in RCW 39.26.125 (which does not have to be reported) and as Section 5A(9) which is required to report. Do we report these? Conflicting instruction.</p>	<p><u>Thank you. Modified the exemptions list.</u></p>

DES’ Summary Response: DES appreciates the feedback we have received requesting clarification on the exemptions changes. In response to the feedback, DES will make the following changes to the draft refresh:

- 1) Regarding exemption 13 (now 11) for professional development (i.e., conferences, seminars, professional licenses): DES followed up with a couple feedback sources. Modified definition for professional development.
- 2) Regarding exemption 12 (now 2) for utilities. TV was removed from this list because the markets for cable television have evolved and expanded with the addition of online providers (example: YouTube TV). Furthermore, the location requirements have been removed from the legal definition of sole source (see RCW 39.26.010(23)).
- 3) Regarding new exemption 19: DES has removed the proposed new exemption to conduct additional stakeholder work.
- 4) Regarding exemption 10 (now included in 1): this exemption has been removed because it is now covered under exemption 1. See 39.26.125(11) Contracts for services that are

necessary to the conduct of collaborative research if the use of a specific contractor is mandated by the funding source as a condition of granting funds. DES will conduct additional stakeholder work regarding this exemption in the future.

Feedback Theme: transparency

The policy is not clear about “available for public inspection” and “providing notice” meaning posted to the agency’s website.

HCA is concerned that the draft policy’s Section 3 increased transparency timelines will unnecessarily delay agency program staff priorities. HCA requests clarification from DES on how it believes these extended transparency timelines are reasonably related to improving procurement outcomes for the state.

DES Response: DES appreciates this feedback. As part of what was identified in the Disparity Study, procurement timelines need to be longer to give businesses ample time to respond. It has been found to be problematic for small and diverse businesses to provide a meaningful response to a capability statement within five business days.

Feedback Theme: Delegated Authority

Unclear how agency's will certify if they have sufficient delegated authority; and Policy 11. the addition of DES reviewing and responding to all capability statements.

Section 9. I don't understand why this item is required nor do I agree that this item should be added. DES performs risks assessments for each agency and issues DA to each agency. DES should already know whether the agency filing a sole source has DA. DES should be tracking and monitoring this data on their end not asking us to reconfirm that we have DA.

DES Response: DES appreciates this feedback. While DES does track delegated authority, agencies are also expected to understand their delegated authority limits and manage/track their spend accordingly, in compliance with the Delegation of Authority policy and Contract Management policy. Agencies need to ensure they have sufficient delegated authority prior to executing any agreement, including sole source and exempt contracts.

Feedback Theme: WaTech Requirements

Section 7, Information Technology contracts, Policy does not explain how DES will be checking for this. Agencies need to know this in order not to run afoul of the policy.

DES Response: Whenever DES receives a sole source IT contracts, DES confers with its contacts at WaTech to confirm that all requirements WaTech policies have been met. Step six (iv) of the sole source procedure covers the requirements: “if applicable, attach proof of compliance with

WaTech policies” For example, security design review, completed an IT Investment Intake Tool (formerly known as the Information Technology Project Assessment (ITPA)).

Feedback Theme: Supplier Diversity Requirements

Section 12, Supplier Diversity - Policy does not explain how DES will be checking for this. Agencies need to know this in order not to run afoul of the policy.

HCA is concerned that: regarding the new Section 12 supplier diversity unbundling analysis requirement. HCA recognizes that the supplier diversity landscape is still maturing and requests that DES conduct more comprehensive agency training sessions with examples and explanations of successful unbundling (e.g., what it looks like in practice). DES should demonstrate to the agency community examples of how DES has successfully applied unbundling in its own statewide contracts, and then use those real-world examples to educate agencies and contractors alike on what unbundling looks like in practice.

Under section 12., what specifically falls under “best practices” and how, if at all, is this different from DES-POL-090-06?

DES Response: Thank you for your feedback. In response to this feedback, we have made the following changes to the refresh draft:

- 1) Moved Sole Source Policy section 8. Compliance, to the end of the policy to make it clear that compliance with the requirements will be reviewed at the agency’s procurement risk assessment.
- 2) We have added new justification questions to the SSCD to address supplier diversity requirements.

Feedback Theme: Why/Benefits of the changes

HCA recognizes the importance of the sole source policy in maintaining procurement integrity. HCA requests that DES share publicly:

- (1) How has DES measured or quantified any benefits associated with increased filing requirements and transparency timelines?
 - a. DES conducted stakeholder work beginning in 2022 regarding increased filing requirements and transparency timelines. Specifically, this discussion was raised at PCAG and BDAG meetings. Furthermore, the Disparity Study results pointed to increased timelines greatly benefitting the vendor community (specifically small and diverse vendors).
- (2) How will benefits to these increased filing requirements and transparency timelines outweigh the substantial administrative burden that will be placed on agency staff?
 - a. DES appreciates this feedback. The increased timelines align with executive orders and state priorities regarding Supplier Diversity.

- (3) Make publicly available an explanation of how the new proposed Section 5 filing requirements are reasonably related to improving procurement outcomes in the state of Washington;
- a. Adding section 5 increases oversight in an area of procurement that has not been widely known or transparent. DES will minimize the administrative burden on this new requirement by limiting the scope of information required.

Expected update for elements in statute. Not sure why such extensive revisions to policy beyond these elements. Many updates were due to bring alignment with the supplier diversity policy implemented and the disparity study conducted years ago. Feedback on common issues over the past 4 years had been kept to incorporate during this policy refresh.

Statute only says DES has 15 not 10 days to review. Why then is time period in WEBS and external website posting also extended? Not a major obstacle or concern, just wanting to understand the need. Time period in WEBS was extended as 5 business days was not sufficient time for vendors to respond with a capability statement. This was found to especially be the case for small businesses; therefore, the time period in WEBS was doubled. The time period for filing in SSCD and posting to your agency's website has to do with the public inspection period given in statute.

Reason for Policy states that it pertains to goods and/or services that are "only available from a single source"; however, that is not the definition under RCW 39.26.010(23). The standard is "of such a unique nature or sole availability that the contractor is clearly and justifiably the only practicable source," which is not necessarily the only source. Further, this point was also misstated in the DES presentation, saying the standard is, "nobody else" can do it. This is not the standard. Thank you for your feedback.

Why was "at the location required" removed from the Sole Source Policy as this is part of RCW 39.26.010 (23) language?

At the time this was placed into the legal definition, working remotely / internet / etc. was not as common as it is now. When DES would see location used as a primary justification for sole source to avoid competition, rather than relying on the work being so unique, and answering the other justification questions as part of the sole source process. The overall intent of Chapter 39.26 RCW is to promote open competition and transparency for all contracts for goods and services entered into by state agencies. DES did conduct stakeholder work regarding this.

Feedback Theme: Filing Sole Source Exemptions

Concern around filing 10-day period.

Missing information to include for exempt purchase filings.

5. B. Filing of Exceptions to SS policy within 10 business days, this seems very confusing on what actual exceptions are required to be filed with DES and which are exempt from the Sole Source Policy.

Section 5.b. It would be helpful if DES made this an annual report or part of the Annual Contracts report. The number of purchases that are conducted under the exemptions is going to create an overwhelming workload for procurement staff at large agencies.

Exemptions - Can you tell us why if they are exempt, why we need to file? This is an added burden to our workload and if we are already reporting our contracts what will this accomplish? Do we really need to report IAA's?

Section 5.B. - This seems to be quite a policy overreach. If DES wants to assess, track, and monitor the exemptions have us file the exemptions but not as an approval process. Just require us to file all sole source exemptions once executed and remove the 10-day period. Keep the filing requirement simple: Contractor Name/Address, Brief scope of service, and exemption #. This way you can still access, track, and monitor but it will not adversely affect our ability to complete contract requests that are clearly exempt. If when monitoring you are seeing agencies improperly using exemptions, this should be addressed when you conduct agency risk assessment and set DA.

The requirement to file Interagency Agreements (Section 5) should be reconsidered. See detail on next page.

Regarding Sole Source reporting of exceptions, am I understanding right that: if it's not a procurement and it's not a sole source, then it has to be reported as a qualifying exception to a sole source? My agency deals a lot with Client Services and this feels like it's creating a lot of new work, which is fine, just trying to make sure I/we understand what is expected.

HCA is concerned that the proposed Section 5 filing requirements are overly administratively burdensome and create an unnecessary layer of administrative hurdles for agency staff, whose capacity is stretched thin, especially during fiscal year end. A more effective stewardship of state funds would be for DES to monitor agency compliance without inserting a new administratively burdensome filing requirement, for example, via the existing risk assessment process.

As a proposed lighter touch alternative to Section 5 filing requirements, DES could instead require agencies to articulate the basis for sole source policy exemptions in contract recitals (e.g., listed at 5(A)(2)-(19)), which could be monitored during the risk assessment process.

Why are Interagency Agreements (IAA) required to be filed with DES via the SSCD, as they are exempted by statute (RCW 39.26.125.10)? Under the proposed policy revisions, which Agency(s) would file the IAA? For example, DFI and DES have an IAA for performing DFI's accounts receivable function Small Agency Financial Services (K7805) - will DES also be

required to file their own IAA? This places a considerable administrative burden on small agencies who are just trying to use the central services offered by the enterprise, let alone having to then justify their use. Please reconsider your proposed inclusion of Interagency Agreements within the new filing and justification requirements.

new filing requirement with executed contract seems like excessive oversight by DES. Why 10 days? since the contract is already executed, why not make it 30? Why even the requirement to file exemptions, couldn't this be included in our annual report? Seems like duplicate reporting.

If it is exempt, why does the agency have to file in SSCD within 10 business days? This is a huge burden for us as purchasers, while we're already reporting on our contracts.

I'd love clarification, it seems like a purchase is 1 of 3 things: 1) procurement, 2) sole source, or 3) an exception. It feels like everything that does not fit in 1 or 2 must all be 100% reported. Is that correct?

General Comment: Not sure why agencies need to file exempt contracts in SSCD, since DES is not going to approve or disapprove them. DES could review them at the time of the agency's annual report or risk assessment audit.

Action 1. "Prepares the exempt sole source contract and all related documentation necessary to support the proposed sole source exemption; to include completing a copy of the Sole Source Contract Filing Justification Template..."

Issue: I am hoping that since DES is not going to be approving these exemptions, the Sole Source Contract Filing Justification Template will be changed to specifically reflect the applicable exemption. This is especially needed as the current Sole Source Contract Filing Justification Template for regular Sole Source filings contains requests for information that will not be relevant to an exemption.

I think it's confusing to know if we need to post in WEBS and in SSCD for exemptions.

5. Exemptions:

A. Certain types of contracts are exempt from the requirements of this Sole Source Contracts policy:

If I am interpreting this correctly, all agencies must now submit SS filing for the following Sole Source Policy exceptions listed under 5. Exemptions: 1): 3, 4, 5, 6, 7, 10, 12, 13, 15, 16, 17, 18, & 19. Only exceptions listed under RCW 39.26.125 (3)-(16) require no filing per the proposed DES Sole Source Policy.

This will be very confusing to manage as the DES Sole Source policy exemptions are different than what is listed in RCW! This section literally states that the "contract are exempt from the

requirements of this Sole Source Contract Policy" How can you then pull them back into the policy and require agency's to file them in SSCD. Can this be reported out annually with our agency contract reporting?

6. requirement to post in SSCD all exemptions except those listed in RCW 39.26.125 Per section 5(1).

a. Huge workload issue. A quick search of our database just in contracts logged since January shows almost 200 contracts that exempted for reasons other than those in 39.26.125, including legislative exemption which is going to have a massive impact to I would guess 80% of WFMD's contracts, most of which are fast track procurements due to nature of fire season.

i. Would require additional staff be given access to SSCD when DNR's intent was to limit access so as to limit folks trying to go the route of sole source without extensive consultation with contracts staff.

b. As a decentralized agency, posting executed contracts within 10 days of execution is not a realistic expectation. It can take weeks if not months to get these contracts sent to us for logging in our database.

c. Not sure I see the benefit. We already report all contracts, including which contracts fall within an exemption, as part of DES' annual report. All DES would need to do to get this data for DNR is sort the report by the exemptions listed. Also, if the goal is record keeping and oversight, this is actually creating duplicate record of what's already in the annual report (or could easily be added to that report if not already there). I'm also not following how it helps with oversight when only some but not all of the exemptions fall in this requirement and DES is not approving or rejecting. Just not seeing how this helps DES or the customer agencies.

DES' Summary Response: DES appreciates the feedback we have received requesting clarification on the filing exemption process. In response to the feedback, DES will make the following changes to the draft refresh:

- 1) Added an FAQ clarifying the "why" exempt sole source contracts are now required to be filed in the SSCD. The purpose of this change is to increase transparency and oversight of sole source exempt contracts in the enterprise (see FAQ #31).
- 2) The requirement to file exempt contracts within 10 business days has been increased to **20 business days**.
- 3) The SSCD filing required information for exemptions will be minimized to reduce workload impacts.
- 4) Additional clarification regarding *which* exemptions to file, and other requirements, has been added to the FAQ (i.e., no IAAs need to be filed, no WEBS posting is required, etc. – see FAQ #3).

Feedback Theme: Sole Source Amendments

4. If an original sole source contract is approved by DES, an amendment should not have to be approved as well from DES. Especially if we are not required to post to WEBS and the posting justification is the same. What will be the review timeframe for DES on amendments? As this was not reviewed by DES previously.

10. Same as 4., if an original sole source contract is approved by DES, an amendment for extending period of performance should not require additional market research be conducted, reviewed, and approved by DES. Especially as we are not required to post to WEBS and the posting justification stays the same. What will be the review timeframe for DES on amendments?

Under section 4., is it required to have DES approval of a sole source amendment if the original sole source contract (that was approved by DES) included language that it may be amended and/or extended?

DES Response: Thank you for your feedback. Amendments have always been required to be filed except if the amendment was considered "administrative" in nature, as defined in the glossary supplement. Amendments to **exempt** filings will not be required to be filed at this time.

Feedback Theme: Capability Statement Review

11. Agencies have been given delegated authority and should be allowed to approve Capability Statements submitted by vendors to determine if the vendor can meet our specific agency's needs. DES would likely not have the Subject Matter Experts or expertise to know each agency's specific Program needs. This additional review process will delay review times for all Sole Source filings.

Q: DES is not a subject matter expert for my procurement, how does DES plan on reviewing capability statements?

A: DES relies on agency staff to clearly, and transparently, articulate the requirements for the service/commodity in its legal notice posted to WEBS. This is the **only** basis for comparison/analysis that DES will use when reviewing capability statements. DES will work closely with agency filing staff to review the capability statements. If any questions arise from DES regarding the agency's analysis, DES will communicate those questions and/or concerns as a priority to decrease the risk of delays in processing the filing.

Capability statements – what is the timeline for review and the reason why. You are taking our authority away by making us submit our capability statements to DES for review/approval. What will that timeline look like and how will DES know what our book of business need is to make an informed decision. This seems to me that it will be more work on our part because now we will have to answer DES questions to make the decision.

DES will communicate questions and/or concerns **as a priority** to decrease the risk of delays in processing the filing. DES aims to complete filing reviews within fifteen business days. Delays may be caused by: missing information, missed steps, staff outages, volume of requests received by DES.

HCA Requests: include in the policy draft timelines for Section 11 when DES will complete its review of capability statements (e.g., "within 7-10 working days").

Thank you for your feedback. The review time will depend on many factors. However, DES will communicate questions and/or concerns **as a priority** to decrease the risk of delays in processing the filing. DES aims to complete filing reviews within **fifteen business days**. Delays may be caused by: missing information, missed steps, staff outages, volume of requests received by DES.

Section 11. I would recommend DES reviewing Agency responses to capability statements after they are finalized and sent. Intermediate review will cause significant delays in process and would add minimal value as DES is not the subject matter expert in the services being procured. It would be more efficient for DES to review the response from agency staff and determine whether they view the sole source as justified.

Thank you for your feedback. DES has found that when an agency submits a response to the vendor that is in conflict with the conclusion that DES analysis reaches, it can cause more delays than if the agency and DES had reviewed together initially.

DES will communicate questions and/or concerns **as a priority** to decrease the risk of delays in processing the filing. DES aims to complete filing reviews within fifteen business days. Delays may be caused by: missing information, missed steps, staff outages, volume of requests received by DES.

It's hard to understand the tipping point that tells us that a capability statement really means that the contract absolutely can take on the work within the time frame, and just receiving an email from an interested contractor who isn't yet set up to really do the work, or is really too busy. Examples would be helpful, although I know we would run everything through DES.

DES relies on agency staff to clearly, and transparently, articulate the requirements for the service/commodity in its legal notice posted to WEBS. This is the **only** basis for comparison/analysis that DES will use when reviewing capability statements.

Section 11. Capability Statements. "An agency that receives a capability statement must submit all documents, correspondence, and the agency's analysis and conclusion to DES for review. Capability statements will be taken into consideration on whether an agency may continue with a sole source contract. Upon DES' review and response, the agency may reply to the submitting vendor with the conclusion."

Issue: In this situation, DES is putting itself in the position of overturning an agency's business decision, replacing their judgement in place of the agency's business decision which does not appear to be an appropriate contracting decision for DES to make and may be outside their contract oversight authority.

DES is given the authority in RCW 39.26.140(2) to review and approve all sole source contracts. As part of the sole source process, DES relies on agency staff to clearly, and transparently, articulate the requirements for the service/commodity in its legal notice posted to WEBS. This is the **only** basis for comparison/analysis that DES will use when reviewing capability statements. DES will work closely with agency filing staff to review the capability statements. If any questions arise from DES regarding the agency's analysis, DES will communicate those questions and/or concerns as a priority to decrease the risk of delays in processing the filing.

Is the additional 5 days going to include the capability statements, how will that work?

Yes, capability statements will now be due by the 10th business day (minimum requirement) of the WEBS posting. The additional five days following the closing of the WEBS posting is to allow additional time for agency staff/DES to review any capability statements received (if applicable).

Would love to have proactive helpful language, to help programs determine if a capability statement directly translates into the vendor actually being able to do the work. We lost about 3 months, cancelling a sole source, working with a vendor that submitted a capability statement, only to find they truly didn't have the capacity and backed out. We were able to get the sole source, but it would have been great if we could have written something better in the legal notice, like "if you are going to submit a capability statement, it's not just that an organization is capable, but they have to have the capacity, responsibility and reputation to do the work. I wouldn't want capability statements to be used just to solicit interest from vendors who might have capacity in the future or are trying to create a path to doing work.

Thank you for your suggestion. We appreciate and can see your point of view. "Capacity" may be added to the legal notice, if specified (i.e., Must have capacity to produce X number of widgets). Responsibility and reputation are considerations for a competitive procurement, as there is no formal evaluation process as part of the capability statement review. In order to fairly assess and evaluate a vendor's qualifications, responsiveness, and/or responsibility, a full competitive process is necessary.

DES Response: DES appreciates the feedback we have received requesting clarification on the capability statement review process. In response to the feedback, DES will make the following changes to the draft refresh:

- 1) Added a couple FAQs and a glossary definition regarding capability statements. A "Capability Statement" is a written statement from a vendor that explains to a state agency how that vendor is capable of meeting the requirements listed in the legal notice. Receiving a capability statement is evidence that there may be an existing market for the business need (good and/or service) and that sole source is not the appropriate procurement route.

A capability statement is not a formal bid that undergoes an evaluation. In order to fairly assess and evaluate a vendor’s qualifications, responsiveness, and/or responsibility, a full competitive process is necessary.

- a. Note: the capability statement review section in the Procedure document explains the capability statement review process, as well as the DES steps (6 and 7).
- 2) Regarding the timing of capability statement review. DES will communicate questions and/or concerns as a priority to decrease the risk of delays in processing the filing. DES aims to complete filing reviews within fifteen business days. Delays may be caused by: missing information, missed required steps, agency staff outages or delayed response times, volume of requests received by DES.

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

Feedback Theme: Market Research
Market research was extensively expanded with these newly proposed procedures, some of the items being asked of the agency's to accomplish are still not clear, in the sections for Sole Source Determination, Presentation of Sole Source Contract Filing to DES, and Responding to Vendor Capability Statements(s) When Received. Agency's will need additional support from training, templates/forms, and examples of what DES is asking with the proposed changes to the Sole Source Contract Policy and Procedures changes.
The market research requirement is vague and desperately needs a tool of some sort. otherwise, it is asking procurement specialists to prove a negative. I understand the need to weed out unjustifiable requests for sole source, but at what point are we just banging our heads against a wall?
Please provide clarifying documents/definitions about market research and what constitutes that.
#10---Market Research. What does "sufficient market research" or "compelling evidence of conducted market research" mean?
Please provide some training on how to conduct compelling market research.
HCA requests: issue more guidance, support and training for the agency community on these new and elevated Section 10 expectations of market research, specifically describing what "sufficient" or "compelling" market research looks like. It would be helpful for DES publish real-world examples and explanations of what "sufficient" or "compelling" market research

looks like. Notable is that there was significant feedback during the April 4th training in the chat requesting that DES offer more training resources on market research; and

Market research was extensively expanded with these newly proposed procedures, some of the items being asked of the agency's to accomplish are still not clear, in the sections for Sole Source Determination, Presentation of Sole Source Contract Filing to DES, and Responding to Vendor Capability Statements(s) When Received. Agency's will need additional support from training, templates/forms, and examples of what DES is asking with the proposed changes to the Sole Source Contract Policy and Procedures changes.

Section 10. How would DES define compelling evidence?

Section 10, Policy states "sufficient" market research while the procedure document says "thorough".

Many of our contract managers (subject matter experts) are engineers, scientist, or information technology experts and are NOT contracting experts. They will need significant training on performing market research and developing capability statements on top of their assigned duties.

Section 10. Market Research

"Due to frequently changing markets, agencies must conduct sufficient market research prior to filing for a new sole source contract or an amendment that extends the period of performance or proposes scope changes. Agencies must present compelling evidence of conducted market research for DES each contract term (including each/any term extension) and amendments."

Issue: The ramifications of this could be crippling for agencies. For instance, if an agency has received approval for a Sole Source contract, needs to file an amendment and DES decides that the agency has not done sufficient market research, will that mean that the agency will either need to stop work and do a procurement? Or stop work while another full-blown Sole Source is advertised and filed? In either case valuable state resources would be used up and may possibly cause a delay in services being provided to Washingtonians or other state agencies.

It is helpful to have more clarity on how to conduct and obtain Market Research data. Again, as stated previously, how would DES define compelling evidence? As "compelling evidence" is a little ambiguous. My concern is we may feel that we have conducted and obtained adequate data to provide compelling evidence, but DES may make a different determination.

This section is overly prescriptive. Conducting and documenting extensive market research on top of the additional outreach for supplier diversity, will significantly delay the agency's ability to procure necessary goods and services. Staff are already prescribed 100% and these new responsibilities will just add to their already burdened workload.

2. i. Gathering detailed information about the past, present, and potential service/goods being acquired; How far back, is there a specific timeframe in mind from DES on past service/goods being acquired? How can agencies find this information?

2. ii. Research about the industry as a whole; Will DES provide training and examples of how to research "the industry as a whole? Is this necessary to acquire service/goods, especially if this might be a one of one purchase. Why devote so much extended time on every single sole source contract? How is this defined by DES? Will agency's need to attend national conferences in this industry to provide proof of sufficient industry knowledge? How is DES going to evaluate how well we performed an extensive research?

2. v. A market analysis of trends, pricing, and service/product availability; Will DES provide training and examples of how to conduct a market analysis of trends, pricing, and service/product availability? How will DES determine if sufficient market analysis of trends, pricing, and service/product availability were conducted by each agency?

2. vii. Surveys and/or questionnaires sent out to gain industry knowledge; Will DES provide training and examples of surveys and/or questionnaires to prospective vendors? This is in addition to actions taken under 2. ii. & 2. v.; Why call out the need for surveys and questionnaires separately?

2. viii. Interviewing other vendors to gain a deeper understanding of their capabilities; Will DES provide training and examples of how to conduct interviews with vendors to gain a deeper understanding of their capabilities? This will take an extensive amount of staff time and goes beyond reasonable actions when conducting market research into exactly what a vendor can potentially provide beyond what they already show online. Will DES support additional funding of FTEs for agencies to accomplish these new Sole Source procedures? This will negatively impact continuity of operations at all agency's having to conduct such time-consuming actions for solicitations that are designated as exempt from competition.

2. ix. Searching WEBS to find vendors registered under the commodity code(s) that the agency intends to use when posting the sole source. *These vendors could be other 'potential sources' that can meet your business need; What is the ask of this procedure? Vendors also have the opportunity to submit a capability statement if they feel that they can provide those same goods/services posted in our Sole Source filing. Is DES asking all agencies to interview all vendors with the same commodity codes listed?

2. x. Conducting a Request for Information (RFI); and; Will DES provide training and examples of how to conduct a Request for Information (RFI). This is unreasonable to request agencies to conduct RFIs on all Sole Source filings as part of these new Sole Source procedures. How is this a good utilization of state time and resources in addition to all the other new process and procedures for agencies to comply with, this is not a required practice for agency's when conducting competitive solicitations. Why make this mandatory for Sole Source filings?

2. xi. Reviewing the results of a recent solicitation that resulted in a single source, etc. (see DES-POL-140 [LINK]); Is this an internal review of recent solicitations that resulted in a single source? Or is this referring to DES reviewing the results of a recent solicitation that resulted in a single source? If so, this is already referenced in "2.vi. Providing results of recent RFI/RFQ/RFP/RFQs etc. conducted by the agency together with results;" Is this a separate review by DES of the results provided?

Under section 10., please explain further, "Agencies must present compelling evidence of conducted market research for DES each contract term (including each/any term extension) and amendments." It is unclear what "for DES each contract term" means.

Under Sole Source Determination, 2., presumably not all of the marketing methods listed are required for each sole source. We are recommending that the sentence be modified to, "Examples of the methods for conducting market research include, but are not limited to:"

2. Under Sole Source Determination, 2.(iv), what does, "connecting with" OMWBE mean in this context?

3. Under Sole Source Determination, 2.(ix), just because a vendor is registered under a given commodity code does not in any way imply that the vendor has the capability to fulfill the requirements of the proposed sole source. Please confirm that DES is not expecting agencies to contact each vendor listed in WEBS with a specific commodity code.

4. Under Sole Source Determination, 2.(xi), does "a single source" refer to a single contract? If that is the meaning, how does this show market research, being that most solicitations result in a single contract (as that usually is the intent of the solicitation coordinator/program)? Is DES referring to previous, similar solicitations that received a single bid?

DES Summary Response: DES appreciates the feedback we have received requesting clarification on market research. In response to the feedback, DES will make the following changes to the draft refresh:

- 1) Created a Sole Source Market Research Worksheet (optional form) to the resources to assist agencies with successfully completing market research.
- 2) DES has modified the sole source FAQs and Glossary Supplement to clarify the market research expectations and determining business need.

Feedback Theme: Resources

It's always missing a Draft Contract, you suggest it but never provide a template.

DES can provide draft contracts by request.

Please put all required forms, processes explanations, definitions, timelines, etc, on ONE webpage. I'm a contract administrator and I need all my tools in a single and clear location.

[These are all included in one space: Sole Source Contracts - DES-140-00 | Department of Enterprise Services \(DES\) \(wa.gov\)](#)

A guide - like the sole source justification questions - would be a great resource for agencies to use for sole source exemption justification.

We are currently working on this update to the SSCD Online manual.

Please consider updating the sole source policy to include the RCW changes that go into affect 6/5/24 and defer the other changes to a later date to allow sufficient time to address agency concerns and also to ensure that agencies are ready to implement these changes. We are nearing fiscal year end and have hundreds of requests we are actively working. If we could please defer additional sole source updates until after fiscal year end, this would be much appreciated.

Thank you for this suggestion. Our policies are only updated every five years and the changes being proposed are a priority to be included to align with the new Supplier Diversity policy.

This updated policy and procedure adds significant workload to already fully committed staff. Many of our staff are not professional contract administrators. They have other full-time responsibilities. They have also not received any formal training on conducting market research. This will significantly impact the agency's ability to procure required goods and services to meet the agency needs and our ability to meet the agency mission of providing services to the public.

I just have a few notes on the Sole Source one, but please let me know if I or our teams can support or help pilot anything as you move through this process. Good luck with the next steps!

1 - The justification template seemed to have been confusing programs/customers often. I'm hoping that's also a part of this refresh, where we're maybe streamlining the questions, instructions and layout on the justification template?

DES Summary Response: DES appreciates the feedback we have received requesting clarification on resources needed. In response to the feedback, DES will make the following changes to the draft refresh:

- 1) The justification questions have been edited to provide clarity.
- 2) The SSCD Online Manual is being updated to include a guide for the new justification questions, anticipated to be completed in summer 2024.

Additional Feedback?

Feedback Theme: Agency Workload

Agency Concern: adding all these additional steps and procedures will increase review and approvals processing times for all Sole Source filings well beyond the newly extended filing times. Will DES be requesting additional staffing to support all of these sweeping changes to the Sole Source filing process to avoid any additional delays in reviewing and approving agency filings? Will DES support agency requests for additional FTEs to meet all the new Sole Source requirements being proposed by DES?

HCA appreciates any steps that DES can take to mitigate further administrative burden on already-limited agency contracting and procurement resources.

The policy and procedures are over prescriptive, which will drastically impact agency resources.

This same group of resources is already adjusting to the supplier diversity policy and other OMWBE requirements. These new policies and procedures are just adding to the already overburdened staff.

This is added workload and not all agency's have the capacity. Will DES be giving agencies FTE resources to help with all the added workload they keep adding to us with all the different reports, different processes, different systems, the separation of duties, etc...

Our Agency Has Multiple Concerns: Adding all these additional steps and procedures will increase review and approvals timeframes for all Sole Source filings well beyond the soon to be extended filing times. How will DES manage all these additional requirements of agency's involving their Sole Source Contract filings with these proposed changes? Will DES be requesting additional staffing to support all of these sweeping changes to the Sole Source filing process to avoid any additional delays in reviewing and approving agency filings as they could cause extensive delays which can impact continuity of services our agency delivers to our clients and customers. Not sure if DES realizes the negative impacts to all agency's across the state, especially the current FTE staffing, for meeting these excessive and labor-intensive requirements proposed by DES for Sole Source Contract submittals. Some of these requirements proposed in the draft Procedures are more extensive than what an agency goes through for a Competitive Solicitation!

DES Response: DES appreciates the feedback we have received regarding potential workload impacts. DES will be monitoring workload impacts caused by the policy changes.

Feedback Theme: Stakeholder feedback

I think the lack of input from agencies that will have to file sole sources is very evident. There needs to be an understanding of the work that is going to burden procurement staffs, especially some of the smaller ones.

HCA requests that DES publish and distribute to agencies written responses to live chat questions logged during regarding the new sole source policy in the DES-sponsored April 4th, 2024 workshop.

DES Response: DES conducted stakeholder work beginning in 2022 regarding increased filing requirements and transparency timelines. Specifically, this discussion was raised at PCAG and BDAG meetings. A survey was sent to all SSCD users in September 2023. The survey covered topics such as market research and sole source exemptions.

The small agency services team is available to assist small agencies (<100 FTE) with their sole source procurements.

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

Question	DES Response
did you talk about why the transparency timelines (WEBS posting, SSCD filing, public notice) are being extended by five days?	<u>They are being extended due to the passage of HB 1471, effective June 6, 2024.</u>
Is this retroactive and applies to current sole source exempts? Or only for new SS exemptions moving forward?	<u>Only for new SS Exemptions going forward.</u>
Will the vendor need to be registered in webs as well for exemption filings?	<u>No, exemption filings do not need to be posted to WEBS.</u>
Can you tell us why if they are exempt, why we need to file? This is an added burden to our workload and if we are already reporting our contracts what will this accomplish?	<u>For transparency and oversight.</u>
Will there be examples of documented market research?	<u>Yes, we have created a market research worksheet to assist agencies.</u>
What does DES consider to be "compelling evidence" of market research?	<u>We have created a market research worksheet to assist agencies with meeting this requirement.</u>
Also, is DES intent to second guess an agency's determination that an exemption applies	<u>No, the intent is to provide further transparency and oversight for sole source exemptions.</u>

<p>are you all going to provide resources to support what your expectations are in regards to market research - we can only guide folks the best we can</p>	<p><u>Yes, we have created a market research worksheet to assist agencies to meet these requirements.</u></p>
<p>So why are agencies given Delegated Authority if we're not being trusted to spend under that DA?</p>	<p><u>RCW 39.26.140(2) requires that The department [DES] must approve sole source contracts before any such contract becomes binding and before any services may be performed or goods provided under the contract.</u></p>
<p>are you all going to allow us to provide feedback on capability- we've had cases of folks responding and not even applying when it goes to a procurement</p>	<p><u>Yes, see the capability statement review section of the procedure. DES will work closely with agency filing staff to review the capability statements. If any questions arise from DES regarding the agency's analysis, DES will communicate those questions and/or concerns as a priority to decrease the risk of delays in processing the filing.</u></p>
<p>Will DES be giving agencies FTE resources to help with all the added workload they keep adding to us with all the different reports, different processes, different systems, the separation of duties, etc...</p>	<p><u>No</u></p>
<p>Will these documents be added to the WA State Procurement Manual part of DES's website to go to one place for all of the documents?</p>	<p><u>Yes</u></p>
<p>Will SSCD be modified for filing Exemptions?</p>	<p><u>Yes</u></p>
<p>Do you have a definition for "non-state funds" ?</p>	<p><u>Yes, the sole source glossary supplement defines non-state funds. Non-state funds means funds provided by other than a state source, such as general fund appropriation or other fee generated funds. Contracts funded by non-state funds means contracts where over 50% of the funding comes from non-state sources.</u></p>

<p>If we receive approval from DES prior to the expiration of 15 business days, can we move forward or do we need to wait until the expiration of the time?</p>	<p><u>No, you must wait the full fifteen business days. That is the legal requirement, effective June 6, 2024 (RCW 39.26.140(1)).</u></p>
<p>Interagency agreements are statutorily exempted under RCW 39.26.125(10). It seems that DES now wants filings for every Interagency agreement entered into - is that correct?</p>	<p><u>No, interagency agreements are not required to be filed. This is explained section 5 Exemptions, sub-section (B.). Also see FAQ #3.</u></p>
<p>DES is getting 5 extra days to do this. We should be able to expect DES to complete their SS review in the 15 business days. Does the 15 days include the capability statements, if the statement comes on the 14th day how would that work?</p>	<p><u>DES will aim to complete filing reviews within 15 business days. Delays may be caused by: missing information, missed steps, staff outages, volume of requests received by DES.</u></p> <p><u>Yes. DES will communicate questions and/or concerns as a priority to decrease the risk of delays in processing the filing. DES aims to complete filing reviews within fifteen business days. Delays may be caused by: missing information, missed steps, staff outages, volume of requests received by DES.</u></p> <p><u>It is important that the agency sends DES any capability statements ASAP after the WEBS posting has closed to avoid delays. Capability statements are a risk that come with sole source procurements, this is why thorough market research is important as a first step in sole source determination.</u></p>
<p>Does the benefit of DES getting their curiosity satisfied immediately around what exemptions agencies are using outweigh the burden on agencies? Isn't this something agencies can report on annually?</p>	<p><u>The purpose of the change is to increase oversight and transparency.</u></p>
<p>RE: Capability Statements. If an agency receives a Capability Statement, will DES confer with the agency before making a decision regarding whether the submitting vendor actually is a legitimate option?</p>	<p><u>Yes, please see the capability statement review section in the Procedure document, which clearly explains the capability statement review process, as well as the DES steps (6 and 7).</u></p>

	<p><u>DES relies on agency staff to clearly, and transparently, articulate the requirements for the service/commodity in its legal notice posted to WEBS. This is the only basis for comparison/analysis that DES will use when reviewing capability statements. DES will work closely with agency filing staff to review the capability statements. If any questions arise from DES regarding the agency's analysis, DES will communicate those questions and/or concerns as a priority to decrease the risk of delays in processing the filing.</u></p>
<p>Existing sole sources that will need to be amended to be extended will be impacted?</p>	<p><u>Yes, the new market research requirements for amendment filings will be included in the SSCD justification beginning June 6, 2024. They will also need to be filed at least fifteen business days before the proposed start date.</u></p>
<p>Will there be any consideration on Federally mandated programs that get derailed by capability statements from vendors who actually have no intention of applying for the competition.</p>	<p><u>DES relies on agency staff to clearly, and transparently, articulate the requirements for the service/commodity in its legal notice posted to WEBS. This is the only basis for comparison/analysis that DES will use when reviewing capability statements. DES will work closely with agency filing staff to review the capability statements. If any questions arise from DES regarding the agency's analysis, DES will communicate those questions and/or concerns as a priority to decrease the risk of delays in processing the filing.</u></p>
<p>Why is 12 limited to State and/or Higher Ed employees only? What if an agency has Volunteers or Contractors conducting state business on behalf of the agency that is required to attend a conference, seminar, etc...?</p>	<p><u>Followed up w/feedback source. See glossary supplement definition for clarification.</u></p>
<p>So DES is going to be making decisions re: an agency's business needs?</p>	<p><u>No. However, DES encourages agencies to use the new Market Research Worksheet to determine its business need.</u></p>

	<p><u>DES relies on agency staff to clearly, and transparently, articulate the requirements for the service/commodity in its legal notice posted to WEBS. This is the only basis for comparison/analysis that DES will use when reviewing capability statements. DES will work closely with agency filing staff to review the capability statements. If any questions arise from DES regarding the agency's analysis, DES will communicate those questions and/or concerns as a priority to decrease the risk of delays in processing the filing.</u></p>
<p>What do agencies with decentralized procurement do when contract managers do not send in contracts promptly to central contracts staff? This is in reference to the 10 day submittal for exempt contracts. We may not get the contract in that time frame.</p>	<p><u>Thank you for your comment – this has been changed to 20 business days to allow additional time for filing exemptions in the SSCD.</u></p>
<p>I have had concerns from vendors not wanting their contracts posted publicly prior to being awarded. How can we determine if a vendor doesn't take that scope and turn it into a capability statement?</p>	<p><u>DES has not seen this issue in practice. Please reach out to DES should this occur.</u></p> <p><u>DES relies on agency staff to clearly, and transparently, articulate the requirements for the service/commodity in its legal notice posted to WEBS. This is the only basis for comparison/analysis that DES will use when reviewing capability statements. DES will work closely with agency filing staff to review the capability statements. If any questions arise from DES regarding the agency's analysis, DES will communicate those questions and/or concerns as a priority to decrease the risk of delays in processing the filing.</u></p>
<p>Were the statutory changes made at the request of DES?</p>	<p><u>Yes</u></p>
<p>Is the 15 business days the timeframe by which DES needs to respond or is it the timeframe that we have to wait prior to</p>	<p><u>Per the updated law, effective June 6, 2024, sole source contracts must be submitted to DES not less than FIFTEEN working days</u></p>

<p>execution? If we, for whatever reason, do not receive a response from DES, can we execute after 15 business days?</p>	<p><u>before the proposed starting date of the contract.</u></p> <p><u>No, per 39.26.140(2) The department must approve sole source contracts before any such contract becomes binding and before any services may be performed or goods provided under the contract.</u></p>
<p>What would be the timeline for DES to evaluate the received capability statement.</p>	<p><u>DES will communicate questions and/or concerns as a priority to decrease the risk of delays in processing the filing.</u></p> <p><u>DES aims to complete filing reviews within fifteen business days.</u></p> <p><u>Delays may be caused by: missing information, missed steps, staff outages, volume of requests received by DES.</u></p>
<p>Could you consider updating sole source policy in two phases. One for the RCW changes effective 6/5. Then defer the other changes at a later date to ensure we have time to implement these changes.</p>	<p><u>The sole source policy is only updated every five years. We have many priority updates in this refresh that we will be implementing to support Supplier Diversity and other state priorities.</u></p>