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

Supplier Diversity Policy

FREQUENTLY ASKED QUESTIONS

**PUBLISH DATE: \_\_\_\_\_\_\_\_, 2021**

1. **Question: What is the purpose of this policy?**

**Answer:** The purpose of this policy is to provide agencies with tools to create maximum practicable opportunities to further promote, encourage and facilitate the purchase of goods and services from Washington small businesses and veteran-owned businesses.

1. **Question: What is supplier diversity?**

**Answer:** Supplier diversity is an intentional practice that includes specific groups based on priorities and/or law. Supplier diversity programs often look at remedying discrimination in the form of dispirit, or unintentional barriers, for groups protected under the federal civil rights act. In addition to minority- and women-owned businesses, priority areas often include veteran status and job creation. Discrimination includes both intentional and disparate impact (i.e. not intentional but resulted in discrimination, such as a business practice that prioritizes incumbent businesses if they were historically with a specific group of people).

1. **Question: Do you have any practice tips for implementing the policy?**

**Answer:** Yes, you can:

* Intentionally including specific groups such as business ownership, industry, and region.
* Ensure that the methods you use are legal and ethical (i.e. we have federal laws that require we public entities who receive $1 of federal funds do not discriminate (civil rights act of 1964)).
* Align your implementation with public constituent priorities (i.e. those individuals and business owners who reside in your jurisdiction).  This may include local job creation, supporting local industry, supporting historically underutilized businesses, veteran status, income or location of businesses, etc.
* Implement either directly or indirectly (through direct contracting or subcontracting).

1. **Question: What is a Washington Small Business?**

**Answer:** As defined in RCW 39.26.010(22), "Small business" means an in-state business, including a sole proprietorship, corporation, partnership, or other legal entity, that:

(a) Certifies, under penalty of perjury, that it is owned and operated independently from all other businesses and has either:

(i) Fifty or fewer employees; or

(ii) A gross revenue of less than seven million dollars annually as reported on its federal income tax return or its return filed with the department of revenue over the previous three consecutive years; or

(b) Is certified with the office of women and minority business enterprises under chapter 39.19 RCW.

* 1. **Question: When is the full definition of Washington Small Business used for purposes of this policy? And when is the size or revenue only qualifiers used for purposes of this policy?**

**Answer:**  Preferences or scoring strategies can only be used for race and gender neutral measures. Therefore, the following strategies can only use the size or gross revenue portion of the Small Business definition (as defined in RCW 39.26.010(22):

* + - Awards under $150,000 to small and/or veteran-owned businesses
    - 25% of all contract awards to small and/or veteran-owned businesses
    - Small and/or veteran-owned business evaluation points
    - Subcontractor inclusion plans (if scored)
    - Using a small and/or veteran-owned business reserved award contract
    - Award evaluation points to Small Business Administration Hubzone Certified businesses

1. **Question:** **What does the policy require?**

**Answer:** The policy requires each agency, from leadership, its supervisors, and through line staff, to address the following interdependent areas: Leadership Commitment; Forecasting; Unbundling; Outreach; Procurement Language; Inclusion Plans; Transparency; Training; Compliance; and Procurement-related Exceptions. Success implementing this policy will require each agency to work collectively to assure that state spending with small and veteran-owned businesses continues to increase.

1. **Question:** **What purchases does this policy apply to?**

**Answer:** All goods (means products, materials, supplies, or equipment provided by a contractor) and services (means labor, work, analysis, or similar activities provided by a contractor to accomplish a specific scope of work) governed by RCW 39.26. The policy applies to all competitive and non-competitive procurements. Exceptions are noted in the policy.

1. **Question: What is supplier diversity forecasting?**

**Answer:** Supplier diversity forecasting is the process of identifying industry categories of past Agency spending with small and veteran-owned businesses, to make informed estimates of future spending and anticipating the Agency’s upcoming needs. Forecasting uses what is known from past activity by reviewing contracting/spend data, the design process, and capacity/staff planning, and applies it to future use. Forecasting better prepares public agencies to proactively line up resources and improve legislative/budgetary support to increase spending with small and veteran-owned businesses.

1. **Question: What is outreach?**

**Answer:** Outreach is an essential component of ensuring supplier diversity. It is agency action a) to take appropriate steps to foster, support, and encourage the participation of underutilized businesses and subcontractors in state competitive solicitations, [agencies reaching out to businesses] and b) to encourage such businesses to compete in state competitive procurements of goods and services [industry-specific events for vendors to meet state agencies].

1. **Question: What is unbundling?**

**Answer:** Unbundling entails the division of a larger contract into smaller ones. Within larger contracts, there may be potential to have a portion segmented to promote competition for small businesses that meets a state procurement goal.

1. **Question: What were the 2019 Disparity Study unbundling recommendations?**

**Answer:** Quoting from the Disparity Study:

Review Contract Sizes and Scopes: “Unbundling” contracts into smaller segments by dollars, scopes or locations was endorsed by many firm owners as one method to provide fair access to State projects. In conjunction with reduced insurance and bonding requirements, where possible, smaller contracts should permit smaller firms to move from quoting solely as subcontractors to bidding as prime contractors. It will also enhance their subcontracting opportunities. State contracting personnel need training in splitting contracts into smaller segments without impugning the integrity of the contracting process. Unbundling contracts must be conducted, however, within the constraints of the need, to ensure efficiency and limit the costs to taxpayers.

1. **Question: Why is there a section on procurement language in the policy?**

**Answer:** Procurement language can have a significant impact on inclusion in, and access to state contracting and procurement. Clear, concise, and plain-talked language, for example, can allow small and veteran-owned businesses to better compete for and enter into contracts with your agency.

1. **Question: What is a procurement?**

**Answer:** A procurement is defined as purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction; includes all functions that pertain to the acquisition, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration. The combined functions of purchasing, inventory control, traffic and transportation, receiving, inspection, storekeeping, salvage, and disposal operations.

1. **Question: What is an inclusion plan?**

**Answer:** Inclusion plans outline commitments a contractor, vendor, or consultant will make towards the state's goal to increase spending with small and veteran-owned businesses. They also allow collaboration with an agency to develop a comprehensive strategy to engage and identify the eligibility and availability of small and veteran-owned businesses. Inclusion plans can be used in a wide variety of procurement types and for a wide variety of goods and services. They are important because they:

a) Demonstrate a contractor, vendor, or consultant’s commitment to include small and veteran-owned businesses; and

b) Allow collaboration with an agency to develop a comprehensive strategy to identify the eligibility and availability of small and veteran-owned businesses.

1. **Question: Why are inclusion plans needed?**

**Answer:** Inclusion plans are important tools for ensuring that small and veteran-owned businesses are afforded the maximum practicable opportunity to directly and meaningfully participate in the procurement of goods and services for the State of Washington.

1. **Question: Why is there a transparency requirement?**

**Answer:** Transparency in public procurement is necessary to ensure the highest ethical standards, to ensure open and fair competition, and to promote public review of contract and procurement documents. A transparent procurement process instills public confidence and encourages participation of the business community to meet the State’s purchasing needs.

1. **Question: What is involved with compliance with the supplier diversity policy?**

**Answer:** The policy requires agencies to document compliance with the policy and include the documentation in all awarded contracts’ files. The requirements for documenting compliance have been addressed in section B3 of the procedure. Agencies are required to publish a report on the agency progress in achieving supplier diversity goals, in order to demonstrate compliance with this policy.

1. **Question: Are sole source contracts exempt from this policy?**

**Answer:** No. Sole source contracts are not exempt because these purchases represent opportunities for small, diverse, and veteran-owned businesses, including but not limited to unbundling the goods and/or services acquired. Note that the current sole source justification process includes these considerations.

1. **Question: How is the contract value calculated when awarding a contract valued less than $150,000?**

**Answer:** It is the initial contract term value.

1. **Question: What if there is a contract amendment to an awarded contract valued less than $150,000?**

**Answer: a.** Amendments are allowed so long as the value of the amendment does not cause the total value of the contract to exceed $150,000.

**Answer: b.** Amendments to extend the term of the contract are allowed so long as the value of the amendment does not exceed $150,000.

**Ex:** An agency wants to add a year to a one-year, $150,000 contract. The agency may add a second year to the contract that costs $150,000. In this situation, the overall cost of the amended contract would be $300,000.

1. **Question: In policy Section C(1), how did DES determine that the award threshold will be $150,000?**

**Answer:** Our research revealed that several jurisdictions are using different thresholds, including various percentages and dollar values. The proposed threshold is within this range of values.