

## MERCURY FREE ENVIRONMENTAL PREFERENCE (EP) DESK AID

1

Use the [Environmental Preference Calculator](#) to determine whether your purchase has a Washington State Environmental Preference.

Yes

2

Plan how the preference will be applied.

3

Include the preference in your solicitation clause and mark it in WEBS.

4

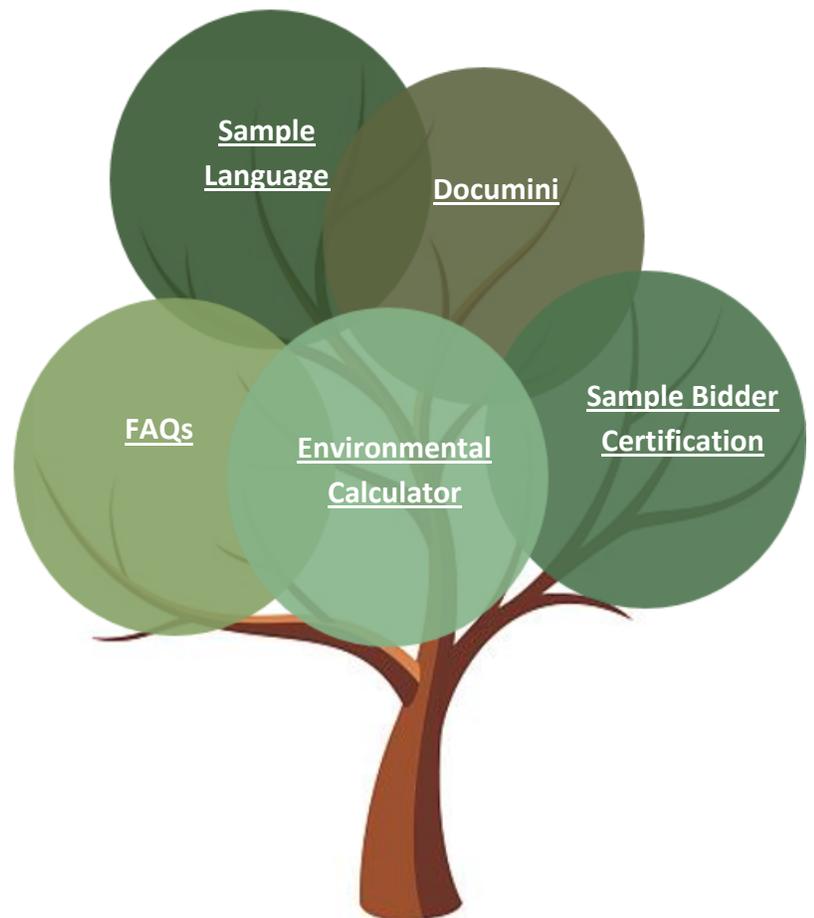
Include the preference language in your sample contract.

5

Apply the Environmental Preference and mark in WEBS.

No

Proceed in completing your procurement, and skip the other steps found in this desk aid.



**Authorizing Sources:** [RCW 70.95M.030](#) | [RCW 70.95M.060](#) | [RCW 70.95M.080](#) | [Executive Order 04-01](#)  
[Executive Order 20-01](#) | [POL-DES-xxx-00](#)



**STEP 1. DETERMINE WHETHER THE PRODUCT YOU ARE PURCHASING HAS AN ENVIRONMENTAL PREFERENCE.**

Use this [Environmental Risk Calculator](#) to determine whether the product you are purchasing is at risk of environmental concerns.

Specifically the Mercury Free Environmental Preference applies to the following products:

- a. This Policy applies to the procurement of all “mercury-added products” as defined in [RCW 70.95M.010\(8\)](#).
- b. The following product categories are applicable to this policy, as provided by the [Interstate Mercury Education and Reduction Clearinghouse Mercury-Added Products Database](#):

|                           |  |
|---------------------------|--|
| Appliances                | Measuring Devices  |
| Batteries                 | Medical Instruments, unless used in medical or research tests regulated by the FDA under the FDA and Cosmetic Act (21 U.S.C. Sec. 301) |
| Computers                 | Office Equipment   |
| Dental Amalgam            | Pumps  |
| Displays/Screens          | Relays   |
| Electronics               | Sensors  |
| Formulated Products       | Switches   |
| Heating/Cooling Equipment | Thermometers   |
| Industrial Machinery      | Thermostats  |
| Lamp Fixtures             | Toys   |
| Lamps                     | Valves   |

The questions in the Environmental Calculator apply to and evaluate the products listed above.

**STEP 2. PLAN HOW THE MERCURY FREE PREFERENCE WILL BE APPLIED. THERE ARE FOUR CONSIDERATIONS (A-D BELOW).**

- A. In addition to the Environmental Preference, agencies may design their specific procurements to meet agency, market, environmental and other needs, which may include other factors (i.e., human impacts and other environmental impacts).
- B. Determine if you need to identify the mercury content in one or multiple items.  
Multiple items: If the procurement is for numerous line items (e.g., office products, multiple devices), the agency should specify those items within the solicitation.
- C. Determine and identify in the solicitation if the bidder must provide notification of substitute products throughout the duration of the contract.
- D. Determine if you will give the minimum 5% preference, or a higher percentage.

Two examples

**Example #1 - One Line Item:** Your agency needs to purchase 6000 hearing aid button cell batteries. Following is a bid tab showing how you could use a cost preference of 5% for



products that do not contain mercury. Remember, you can make your Environmental Preference higher than 5%.

**Cost Preference Sample:**

| Product:  | Hearing Aid Button Cell Battery |                |                              |                               |                                    |  |
|-----------|---------------------------------|----------------|------------------------------|-------------------------------|------------------------------------|--|
|           | Quantity 6000                   |                |                              |                               |                                    |  |
| Bidder:   | Unit Price                      | Extended Price | Mercury Content <sup>2</sup> | Price Preference <sup>3</sup> | Total Evaluated Price <sup>1</sup> |  |
| Bidder A: | \$12.99                         | \$77,940.00    | 7 mg                         | 0%                            | \$77,940.00                        |  |
| Bidder B: | \$13.69                         | \$82,140.00    | 5 mg                         | 5%                            | \$78,033.00                        |  |
| Bidder C: | \$12.87                         | \$77,220.00    | 7 mg                         | 0%                            | \$77,220.00                        |  |
| Bidder D: | \$13.20                         | \$79,200.00    | 5 mg                         | 5%                            | \$75,240.00                        |  |

**Footnotes:**

- 1 - Calculation of price preference: Bid Price multiplied by .95 equals the Total Evaluated Price.
- 2 - If there is a mercury-free product bid, then only those bidders who bid a mercury-free product are responsive. In the instance of multiple bidders bidding mercury free product(s), only those will be evaluated based on price and other non-cost factors (the preference does not apply).
- 3 - The preference is only applied to those products bid that contain the least amount of mercury.

**Example #2- Multiple Line Items:** If you offer a Mercury Free Preference on several items in your procurement, determine how you will award the preference. Will each item receive a 5% preference if they don't contain mercury or contain mercury with a comparatively low global warming potential, or will you prorate the 5% across the items requiring an environmental rating?

**STEP 3: INCLUDE MERCURY FREE PREFERENCE IN YOUR SOLICITATION.**

- A. Include a *Mercury Free Purpose Statement* regardless of whether the product you are purchasing will have a Mercury Free Environmental Preference.

**Sample Mercury Free Purpose Statement:**

Mercury has an adverse effect on human health and the environment. Accordingly, the State of Washington, through its procurements of goods, is trying to minimize the purchase of products with mercury and to incentivize vendors to sell products without mercury.

- B. Include a statement that specifies how you will award the preference points during the evaluation.

**Sample Mercury Evaluation Clause:**

Pursuant to RCW 70.95M.060, a preference of XX% (no less than 5%) per product line item will be applied to any bidder who provides:



- Products that contain the least amount of mercury-added compounds or components as compared to other bidders, as designated by the Interstate Mercury Education and Reduction Clearinghouse Mercury-Added Products Database OR
- A product containing mercury that is designed to reduce electricity consumption by at least forty percent and there is no non-mercury or lower mercury alternative available that saves the same or a greater amount of electricity as the exempted product.

Accordingly, all bidders must certify whether they are seeking the statutory preference for products that contain the least amount of mercury-added compounds in Exhibit \_\_ (Environmental Certifications). Bidders who seek to obtain the XX% bid preference for products that contain the least amount of mercury-added compounds must, in regard to the products pertaining to this procurement, certify that the products specified in Exhibit \_\_ (Cost Worksheet) have:

- The accurate amount of mercury compounds/components as listed OR
- That the product containing mercury is designed to reduce electricity consumption by at least forty percent and there is no non-mercury or lower mercury alternative available that saves the same or a greater amount of electricity as the exempted product.

In the event there is a mercury-free product bid, then only those bidders who bid a mercury-free product are responsive and the preference doesn't apply.

- C. Include any gradation matrix you will be using (See Examples in Step 2).
- D. Include a requirement that states that the bidder must ensure the product or products still maintain the same levels of mercury throughout the term of the contract.

When writing this requirement consider these questions:

- What are the consequences if the product that was given preference is changed and no longer meets the agreed upon mercury levels?
- Will the item be removed from contract until corrected?
- Will the vendor be cured/suspended/terminated due to contract performance?

- E. Include an [Environmental Bidder Certification](#).
- F. Mark your preference in WEBS on the Manage Solicitations screen.

#### **STEP 4: INCLUDE MERCURY-FREE ENVIRONMENTAL PREFERENCE LANGUAGE IN YOUR SAMPLE CONTRACT.**

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- A. Include language regarding Environmental Preference in your sample contract.



### **Sample Mercury contract warranty language:**

Contractor Priority - Product(s) Do Not Contain Mercury. Contractor represents and warrants that, during the term of this Contract, for any product(s) for which Contractor sought and was awarded a purchasing priority pursuant to RCW 70.95M.060 and Washington State Procurement Policy #DES-POL-70.95M.060-00, such product(s) shall continue to be mercury free for the life of the contract.

Contractor Preference – Product(s) Containing the Least Amount of Mercury. Contractor represents and warrants that, during the term of this Contract, for any product(s) for which Contractor sought and was awarded a purchasing preference pursuant to RCW 70.95M.060 and Washington State Procurement Policy DES-POL-70.95M.060-00, such product(s) shall meet or exceed the lowest amount of mercury that enabled Contractor to be awarded such preference.

Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) days, Agency may suspend or terminate this Contract. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

- B. Include *Mercury Free Environmental Purpose Statement* regardless of whether the product you are purchasing qualifies for a Mercury Free Preference.

### **Sample Mercury Free Purpose Statement:**

Mercury has an adverse effect on human health and the environment. Accordingly, the State of Washington, through its procurements of goods, is trying to minimize the purchase of products with mercury and to incentivize vendors to sell products without mercury.

## **STEP 5: RANK TESTS IN ORDER**

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If the bidder wishes to receive the preference, you will receive a Bidder Certification for Recycled Content Products Environmental Preference.

In the event that no bids are received seeking an Environmental Preference, the agency shall evaluate and award based on best value.



## Sample Language

SELECT THIS LINK FOR THE LATEST [SAMPLE ENVIRONMENTAL PREFERENCE BIDDER CERTIFICATION](#)

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### SAMPLE MERCURY FREE ENVIRONMENTAL PURPOSE STATEMENT:

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Mercury has an adverse effect on human health and the environment. Accordingly, the State of Washington, through its procurements of goods, is trying to minimize the purchase of products with mercury and to incentivize vendors to sell products without mercury.

### SAMPLE MERCURY FREE ENVIRONMENTAL EVALUATION CLAUSE:

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Pursuant to RCW 70.95M.060, a preference of XX% (no less than 5%) per product line item will be applied to any bidder who provides:

- Products that contain the least amount of mercury-added compounds or components as compared to other bidders, as designated by the Interstate Mercury Education and Reduction Clearinghouse Mercury-Added Products Database OR
- A product containing mercury that is designed to reduce electricity consumption by at least forty percent and there is no non-mercury or lower mercury alternative available that saves the same or a greater amount of electricity as the exempted product.

Accordingly, all bidders must certify whether they are seeking the statutory preference for products that contain the least amount of mercury-added compounds in Exhibit \_\_ (Environmental Certifications). Bidders who seek to obtain the XX% bid preference for products that contain the least amount of mercury-added compounds must, in regard to the products pertaining to this procurement, certify that the products specified in Exhibit \_\_ (Cost Worksheet) have:

The accurate amount of mercury compounds/components as listed OR

That the product containing mercury is designed to reduce electricity consumption by at least forty percent and there is no non-mercury or lower mercury alternative available that saves the same or a greater amount of electricity as the exempted product.

In the event there is a mercury-free product bid, then only those bidders who bid a mercury-free product are responsive and the preference doesn't apply.

### SAMPLE MERCURY FREE ENVIRONMENTAL CONTRACT WARRANTY LANGUAGE:

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Contractor Priority - Product(s) Do Not Contain Mercury. Contractor represents and warrants that, during the term of this Contract, for any product(s) for which Contractor sought and was awarded a purchasing priority pursuant to RCW 70.95M.060 and Washington State Procurement Policy #DES-POL-70.95M.060-00, such product(s) shall continue to be mercury free for the life of the contract.



Contractor Preference – Product(s) Containing the Least Amount of Mercury. Contractor represents and warrants that, during the term of this Contract, for any product(s) for which Contractor sought and was awarded a purchasing preference pursuant to RCW 70.95M.060 and Washington State Procurement Policy DES-POL-70.95M.060-00, such product(s) shall meet or exceed the lowest amount of mercury that enabled Contractor to be awarded such preference.

Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) days, Agency may suspend or terminate this Contract. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

# Non-mercury-Added Products Purchasing Preference Policy

## FREQUENTLY ASKED QUESTIONS

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### 1. Does the policy cover disposal of mercury-added products?

**Answer:** No, the policy establishes the purchasing priority and preference required in RCW 70.95M.060. However, in accordance with RCW 70.95M.030, agencies must dispose of mercury and mercury-added products in an environmentally responsible and acceptable manner based on the [Department of Health's instructions on proper disposal methods](#).

### 2. Are there civil penalties for violation of this chapter?

**Answer:** Yes, in accordance with RCW 70.95M.080, a violation of this chapter (RCW 70.95M) is punishable by a civil penalty not to exceed one thousand dollars for each violation in the case of a first violation. Repeat violators are liable for a civil penalty not to exceed five thousand dollars for each repeat violation. Penalties collected under this section must be deposited in the model toxics control operating account created in RCW [70.105D.190](#).

This is not collected or enforced by the Department of Enterprise Services, as the Department of Ecology is the defined department for Chapter RCW 70.95M.

### 3. What documentation is recommended to support environmental purchases?

**Answer:** Purchasing entities can use the Interstate Mercury Education and Reduction Clearinghouse's (IMERC's) [Mercury-Added Products Database](#) to document their purchasing decisions regarding this policy and procedure. In addition, agencies will be able to use WEBS to document and track environmental preferences.

### 5. To whom does this policy apply?

**Answer:** Any state office or activity of the executive branch of state government, including state agencies, departments, offices, divisions, boards, commissions, institutions of higher education as defined in [RCW 28B.10.016](#), correctional and other types of institutions ([RCW 39.26.010\(1\)](#)) ([RCW 39.26.100](#)) ([RCW 39.26.102](#)).

### 6. What are the Authorizing sources?

**Answer:**

- [Mercury Free Products Purchasing Preference Policy](#)
- State Law [RCW 70.95M.060](#)
- State Law [RCW 70.95M.030](#)
- State Law [RCW 70.95M.080](#)
- Executive Order [Executive Order 04-01](#)
- Executive Order [Executive Order 18-01](#)



**7. What is the effective date of the policy?**

**Answer:** [Link to policy](#)

**8. Question:** When do I have to complete the training?

**Answer:** [Link to Chris Liu letter](#)

**CONTACTS & RESOURCES**

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Contact DES Customer Service, (360) 360-407-2210 or email [Contractingandpurchasing@des.wa.gov](mailto:Contractingandpurchasing@des.wa.gov).

- Questions about providing the Environmental Preference during procurement
- The ratings of mercury within Master Contracts