2SHB2452 Procurement Reform

Work Group Recommendations

As of September 28, 2012

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| Training Work Group  Procurement Training Recommendation |
| Reference for Recommendation: 2SHB2452 (RCW 39.26) – New Section 12 Training  In today’s environment, staying in pace with technology and the evolution of the procurement field is essential. State agencies and higher education institutions that can develop professionals who understand and apply leading practices and perform procurement, contracting, and management in the most effective and efficient way possible is critical for consistency in process. State government has, and will continue to for the foreseeable future, experience extreme budget shortfalls due to economic factors. As a result, the purchasing of goods and services has become more visible and critical in the state’s efforts to stretch taxpayer dollars. A professional certification and training program for procurement professionals and contract managers is necessary for agencies and higher education institutions to perform sound procurement activities that allow for innovation and appropriate response to the ever-changing market. Proficient procurement professionals need to have the ability to assess and manage procurement risk and apply best business practices and methods that add value to the purchasing process.  Primary Recommendation:  After initial research, the Training Workgroup’s primary recommendation is a certification and training model similar to the Oregon State Procurement Office Training and Credentialing Program (see model attached). In the late 1990’s, Oregon formed a Procurement Officer Council with a sub-group called the Training Advisory Group (TAG). The TAG recommended curriculum for basic certification that covered the necessary skill sets required for individuals to perform procurement activities with a solid level of proficiency and consistency. Based on the TAG’s recommendations the Training office, then consisting of two staff, formed a workgroup with multiple state agencies to develop the shell of the curriculum.  The Training office then partnered with a community college to develop and deliver the initial basic fee-based certification program. Training is tuition-based and also subsidized by agencies based on a FTE assessment. Since then, Oregon’s procedures have expanded to include an Advanced Certification and a Certificate of Achievement Program, with additional training opportunities being planned for the future. Oregon recommended a phased approach to curriculum development, which the workgroup embraces. While Oregon’s training program is voluntary, procurement proficiency is tied to delegated procurement authority for each agency.    Our recommended approach is to train procurement professionals and others based on the function they perform, not the job class of the employee. Recommend required training would include the following:   * Certification program for all staff who procure goods and services * Training (Certificate of Achievement) for staff who manage contracts * Training (Certificate of Achievement) for all procurement evaluators * Training (Certificate of Achievement) for executive managers * Training (Certificate of Achievement) for staff who perform small acquisitions using P-Card and other methods * Assessment (grandfathering) process for existing procurement professionals (see Alternate Approaches below). * Specialized training for high-risk acquisitions (possibly part of an Advanced Certification program) * Certification program for delegated trainers (train the trainer), allowing agencies to conduct their own training     The Training Workgroup further recommends assuming the role of a Training Advisory Group to determine the structure and content of the Certification Program and the various subsequent training programs, as in the Oregon model. The group would determine necessary skill sets and competencies required for each program and program level. Once requirements are established, the Training Workgroup recommends partnering with higher education and contracted professionals to develop the actual curriculum, including core skills and electives.  Assumptions/pre-requisites:   * Review of existing training programs   + Current contract training courses and curriculum   + Performance based contract training   + Risk management training   + Ethics training   + Executive Management Training   + Other * Modification or elimination of existing training programs * Resources will be needed to develop, deliver, manage and sustain the new training program. * Assessment of current procurement professionals allowing demonstration of proficiency, and to grandfather into the new requirements. * Various training delivery methods will need to be researched to determine the most cost-effective and resource-effective way of providing training programs state-wide. * Implementation training focusing on the changes to Washington State law must be developed and conducted statewide in fall 2012, or as soon as the policy is finalized. * Develop certification and training through a phased approach starting with basic certification and small procurement training.   Issues and Concerns:   * Resource availability to develop, deliver, manage and maintain a rigorous and meaningful training program is integral to the risk framework that will be used to determine delegated authority. Sustainability of the program is vital. * DES ability to provide procurement resources if delegation of procurement authority is not approved. * Collective Bargaining and the alignment with Job Descriptions/Certification and Training * Cost Effectiveness and frequency of training (tuition/fees/travel costs, etc.) * Clear training objectives must identified * Measurement of certification and training success.   Alternate approaches:   * Limit the number of classes required for each level of training or certification (a mini-version of Oregon training program). This is not recommended. * Staff acknowledgement document for comprehension of policies/procedures/state law (not highly recommended). * Grandfather clause for holders of national certifications, experience, OFM training, or other relevant training. Although under our primary recommendation, all these things would be considered as part of the grandfathering process, we do not recommend that this be the only deciding factors. We want to assure that individuals are proficient in Washington State procurement in additional to national and other training. * Use of existing training programs within agencies/higher education to augment certification and training. (Highly recommended in coordination with our recommended training model). |

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| Training Work Group  Procurement Credentialing Recommendation |
| Reference for Recommendation: 2SHB2472 – New Section 12 Training |
| MCBD06630_0000[1]  **State Procurement Office**  Training & Credentialing Program  Training and credentialing programs develop and document core competencies (skills, knowledge, and abilities) that demonstrate professional expertise.  DAS-SPO credentials add value!   * Focus is on Oregon-specific regulations * Easy to accomplish * Cost effective (less than half the cost of national certification)   + Cost-considerate programs: allows applicants to use daily work projects to qualify for or renew certifications   Certificates  Three types: Small Procurements, Contract Administration, Administrator  Oregon Small Procurement Certificate (OSPC)  Requirements: 3 classes – Direct Purchase & Negotiations, ORPIN (e-procurement system, and one full day or two half days of elective topics  Oregon Contract Administration Certificate (OCAC)  Requirements: 3 classes – Contract Administration, DAS-Rules, and Procurement Ethics  Administrator Certificate of Procurement (ACOP)  Requirements: 1 21-hour hybrid class (online & face-to-face sessions) Topics include Procurement Basics, Risk Management, Rules, Ethics, and Authority.  Certification  Two types: Basic and Advanced  Basic - Oregon Procurement Basic Certification (OPBC)  Requirements: At least 1 year procurement experience PLUS   * Completion/passing Principles of Public Contracting * Current national certification or 35 points of procurement training * Pass certification exam   Advanced – Oregon Procurement Advanced Certification (OPAC)  Requirements: At least 3 years procurement experience PLUS   * Holds OPBC and OCAC * Completion of an independent work-study project * Pass peer review – oral presentation |

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| Sole Source Work Group  Posting Vendor System Recommendation |
| 2SHB2452 Reference:  NEW SECTION Sec.2 DEFINITIONS, subsection (22)  NEW SECTION Sec. 14 COMPETITIVE SOLICIATION – EXCEPTIONS  NEW SECTION Sec. 16 SOLE SOURCE CONTRACTS  NEW SECTION Sec. 23 TRANSPARENCY   |  | | --- | | **Recommendation #1** – (Aaron) Section 16(1) of the legislation requires agencies to make contracts available for public inspection not less than 10 working days before the proposed starting date of the contract. Section 16(3) allows the Director of DES to provide exemptions to the requirements of Section 16. The recommendation is that DES provide written policies that spell out the process for requesting and granting an exemption to the posting requirements of this section. Exemption may include, but not be limited to, exemption from the full posting requirements for all sole source contracts, exemption for specific contracts or from the 10 day posting period.  **Recommendation #2** – (Aaron) Section 16(1) only requires agencies to post a sole source contract. The recommendation is that only the contract be posted for public inspection. The intent of the legislation is to support efficiencies in procurement while encouraging competition as much as possible. Including more information than what is required in the legislation to be posted undermines the efficiency of agencies and adds a reporting burden that is unfunded. Agencies will retain for their records information regarding sole source justifications (e.g. sole source justification criteria; background and qualifications of contracting vendor; project scope; etc.)  (Susan)  That the posting on the University’s webs site/vendor notification system of the intent to sole source be considered as part of the ten day period currently required in the law.  That the law be changed to make this no less than three working days.  Recommendation is that the GUPPEE group get this section of the law rewritten.  (Melanie & Teresa)  Post sole source intent on WEBS for 5 days. Add more space on WEBS to provide information to Vendors about the contract and what is required. Require a certain level of detail in the posting in order for the vendor community to be aware of all the requirements of the contract.  (Heidi)  Vendors would like to see the following items on Webs when a firm has been selected for Sole Source:  What criteria was used in making the decision                What made the sole source approval unique to this firm?                What criteria was used to determine that no other vendor could provide this service or product                Background information on the sole source vendor, size, location, area of expertise                Brief Scope of The Project  What were the terms and conditions?                Liquidated Damages                Payment Terms                Value of Contract                Length of contract both original and optional add-on years | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)  (Susan)  Florida – 72 hours for state agencies; University of Colorado 3 days;  (Melanie & Teresa)  N/A | | Assumptions / Pre-requisites / Dependencies:  (Susan)  Process in place to evaluate any proposed challenges or submissions to the posted sole source intent justification.  (Melanie & Teresa)  N/A | | Discussion of anticipated benefits:  (Susan)  Will keep items moving.  (Melanie & Teresa)  Presently when a sole source is posted on WEBS a short caption is provided (250 characters is the max that can be used) and then generally there is an attachment. It is believed that some vendors are not looking at the attachment and therefore, rely solely on that small caption for the information about the contract. If more information can be provided on the display page it will better inform vendors about what is truly required for the contract. | | Discussion of anticipated concerns:  (Susan)  The ten day open period and the time period needed by DES for approval expand this process to a time period that the Universities may not be able to work with well due to quarter systems, and faculty and student involvement.  Extra work involved responding to inquiries of the contract and sole source justification. Public inspection of contract and justification after any WEBS posting need to have some way to limit some of the extra work involved in providing information and documentation. Maybe we can charge a fee for providing the documents?  (Melanie & Teresa)  N/A | | List of alternate approaches:  (Susan)  N/A  (Melanie & Teresa)  N/A | |
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| Sole Source Work Group  Sole Source Recommendation |
| 2SHB2452 Reference:  NEW SECTION Sec.2 DEFINITIONS, subsection (22)  NEW SECTION Sec. 14 COMPETITIVE SOLICIATION – EXCEPTIONS  NEW SECTION Sec. 16 SOLE SOURCE CONTRACTS  NEW SECTION Sec. 23 TRANSPARENCY  Sole Source Contracts WORKGROUP Recommendations  SOLE SOURCE is defined as a contractor providing goods or services of such a unique nature or sole availability at the location required that the contractor is clearly and justifiably the only practicable source to provide the goods or services.  Subject Areas   1. Justification 2. Posting on Vendor System 3. Posting for Public Inspection 4. Exemptions   Systems Recommendation: Create a web based portal that allows an Agency to meet the following five reporting requirements by performing a single data entry, whereby the underlying systems share the data through integration:   1. Contracting opportunities are posted on the state’s enterprise vendor registration and bid notification system (the enterprise bid notification system), which is currently the WEBS system. 2. Public inspection availability notices are posted on an enterprise system that is open, transparent, and publicly accessible such as fiscal.wa.gov. If unable to integrate with fiscal.wa.gov, consider modifying the existing enterprise bid notification system (WEBS) calendar to meet both the requirement to post the contracting opportunity and the availability for public inspection. 3. DES approval filings and reportings and their supporting documentation are transmitted to DES online via systems such as Personal Service Contracts Database (PSCD), Client Services Contract Database (CSCD), and Enterprise Contract Management System (ECMS). 4. Performance Based Contract Reporting Currently the process is to report data quarterly. A new system would allow reports to be auto generated without additional manual effort. 5. List of all contracts that the agency has entered into or renewed that are required to be submitted annually to the department (SSHB 2452, Sec. 23. TRANSPARENCY). 6. How will we *Justify* Sole Source Acquisitions?   Recommendation #1:  DES: Will provide formal guidance to agencies for the minimum content of their sole source justification. The justification will be in the form of paper or online form perhaps similar to what California requires. A sample form is attached for review below.  Agencies: Will provide a complete justification to include as much information as is needed to reach a reasonable determination and answer a standard set of questions.  Factors to consider when completing the justification process:   * 1. **Unique characteristics** – Describe the unique qualifications, abilities or expertise of the contractor to meet the agency needs and/or describe the unique nature of the goods and services. Unique goods or services would be those that are highly specialized or one-of-a-kind.   2. **Special circumstances** – Provide a description of any other special circumstances that may be relevant such as confidential investigations, copyright restrictions, time constraints, or sole availability at the location required.   3. **Time constraints** – If time constraints are applicable, identify when the agency was on notice of the need for the goods or services, the entity that imposed the constraints, explain the authority (if not obvious) of that entity to impose them, and provide the timelines for work to be accomplished.   4. **Geographic limitation** – If the proposed contractor is the only source available in the geographical area, state the basis for this conclusion and the rationale for limiting the size of the geographical area selected.   5. **Market Research** – To ensure that the products and/or services being requested as sole source are in fact sole source and that the price is fair and reasonable.     Recommendation #2: Add the ability to do a BEST SOURCE contract.  *BEST SOURCE is defined as a contract where the vendor can provide goods and/or services to the agency that provides a cost savings to taxpayers that can be substantiated. In most cases agencies have been* contracting with a vendor who is familiar with the agency’s project and would save staff time and resources by continuing a contracting relationship with this vendor for these goods and/or services.  The agency must justify how using this vendor is more cost effective. However, vendors may call for more information and may challenge the best source determination.  **Vendor Comment:** Reasoning behind this is the vendors often call and ask or question in the Q&A “do you already have a vendor providing this good/service?” They often won’t waste their time submitting proposals if they know there already is a vendor the agency is happy with. Additionally there won’t be any attempts to try to sole source a ‘best source’. The current language for a sole source allows for past performance but this should be more appropriately defined as a best source, it does not make them a sole source.  Best Source Criteria Justification:   1. **Unique characteristics** – Describe the unique qualifications, experience, abilities or expertise of the contractor to meet the agency needs and/or describe the nature of the goods/services. Identify how the unique experience or qualification allow for less risk and cost for the agency than beginning with a new vendor. Other factors that may be considered include past performance, cost-effectiveness (learning curve), and/or follow-up nature of the required goods and/or services (best source). 2. **Special circumstances** – Provide a description of any other special circumstances that may be relevant such as confidential investigations, copyright restrictions, time constraints, previous developments, or availability at the location required. 3. **Time constraints** – If time constraints are applicable, identify when the agency was on notice of the need for goods/services, the entity that imposed the constraints, explain the authority (if not obvious) of that entity to impose them, and provide the timelines for work to be accomplished.   **Recommendation #3: Vendor Suggestion** - Vendors would like to see the following items on the enterprise bid notification system when a vendor has been selected for Sole Source:   * 1. What criteria was used in making the decision?   2. What made the sole source approval unique to this vendor?   3. What criteria was used to determine that no other vendor could provide this service or product?   4. Brief scope of the project.   5. Background information on the sole source vendor, such as: size, location, area of expertise, etc.   6. What were the terms and conditions that could potentially limit the number of vendors capable of providing the good or service? * Liquidated Damages * Payment Terms * Value of Contract * Length of contract both original and optional add-on years   Workgroup Comment: We agree that posting justification items 1-4, should be addressed. Items 5 & 6 wouldn’t always be relevant. Our recommendations provide for detailed justification, which will make sufficient information available and allow opportunity for vendor questions.  Recommendation #4: Best practice would include a means of allowing vendors to submit questions and concerns in reference to a sole/best source posting without directly challenging the sole source decision. This would give the agency the ability to amend the posting to a more appropriate justification, or change the solicitation to a competitive bid.  *Benefits*:  Vendors will get more detailed information on the sole/best source contracts and will allow them an opportunity to get more information and/or request a bid if they truly can compete.  Vendors will get notification that there is a best source and won’t waste their time bidding on contracts that are technically weighted for best source vendors but can challenge the contract if they truly can compete.  Vendors will have an opportunity to challenge and request a bid for the sole/best source but will have consequences to wasting agency time if they aren’t valid requests. Vendors will be encouraged to be monitor sole/best source contracts and question whenever there isn’t sufficient information to conclude a sole/best source is appropriate. The agencies (DES) will be able to keep vendors from challenging every bid for no valid reasons.  *Concerns*:  Late filings – How do agencies/DES deal with situations where work was started prior to approval from DES for sole source contract?   1. How will we *Post* Sole Source Acquisitions (for vendor review/response)?   [🡨*Public Inspection* Period-announce availability---min. 10 days🡪]  [🡨Post for *Vendor Response*---3/5 days🡪]  [Response due by COB 3rd/5th day]  [🡨File Contract for *DES Approval*------------------------min. 10 days🡪]  Agencies must:  Submit contract for DES approval minimum of ten working days  Post contracting opportunity on the enterprise bid notification system for vendor response  Make contract available for public inspection for a minimum of ten working days  Recommendation #1: Primary Recommendation: Posting on the enterprise bid notification system is required for a minimum of five (5) business days, with a response from the vendor due by COB on the last day of the posting.  *Alternate* Recommendation #1: Posting on the enterprise bid notification system is required for a minimum of three (3) business days, with a response from the vendor due by COB on the last day of the posting.  Background: In researching other state’s posting timeframes, we found times varied, however best practice is 5 days. Agencies have expressed a desire to have some flexibility in the number of days/timing related to the posting requirement.  Suggestion: Change bid calendar in the enterprise bid notification system to add additional characters to the short description. This will allow anyone to view current postings without needing to login or be a registered vendor.  Recommendation #2: If vendors don’t challenge the sole/best source and it was posted for 5 days, then DES can approve.  The following are recommended posting requirements for filing with DES and posting on the Washington State electronic bid system:   * Filing with DES a minimum of 10 business days prior to effective date of the contract is required by law. Approval from DES is required before contract can be binding. * DES responsibility could be lessened by making this a vendor regulated process. If vendors don’t challenge the sole/best source then DES can approve.   Issue: The state must provide proper training for staff involved in contracts/purchasing which would lessen the review process and shift responsibility to the agencies for compliance.  Recommendations #3: VENDOR INQUIRIES   1. Vendor may contact agency staff listed in the posting, for more information. 2. Vendor may submit information that supports the fact that this is not a sole/best source contract. 3. Assumption: Web posting is the only time that vendors can challenge the sole source intent. Web posting for vendors is different than public inspection.   Recommendations #4: VENDOR CHALLENGE   1. In the principle of maintaining integrity in Washington State procurement processes, vendors have the ability to monitor sole/best source contract and notify the agency (as directed in the posting) regarding the sole/best source contract during the posting period on the enterprise bid notification system if they believe they can provide these goods and services. The vendor challenging the sole/best source contract should be prepared to substantiate such a claim. The agency and the challenging vendor may have discussions to determine the validity of the challenge prior to an official challenge being submitted. 2. Vendors who successfully challenge the sole/best source award will be required to commit to submitting a competitive proposal in response to the agency RFx. Vendors are well positioned to partner with the state in monitoring sole/best source contracting activities. If the sole/best source contracts are justifiable and supporting information is provided in the posting, there shouldn’t be a lot of questions or attempts to challenge the sole/best source. 3. We recommend the use of a standard electronic form to challenge the sole/best source posting. It would be easily completed and signed by an authorized agent of the challenging vendor. 4. If the agency determines that the challenge has merit, the agency may initiate a competitive bid process. The challenging vendor is required to prepare a response to the solicitation when it is posted on the enterprise bid notification system. 5. Vendor will acknowledge and will be advised of the risk of debarment if they misrepresent their ability to meet the contract requirements or fail to submit a proposal after the release of a competitive bid process as a result of a vendor’s challenge. 6. For DES monitoring and transparency purposes, add an indicator (possibly a radio button) in enterprise bid notification system to select if there were challenges to the posting. 7. Based on vendor challenges, DES could refuse to approve sole/best source posting, if there are no vendor challenges DES could approve sole/best source posting.   Recommendation #5: Reconfigure the Enterprise Bid Notification System  Presently when a sole source is posted on the enterprise bid notification system (WEBS) a short description is provided (250 characters is the max that can be used) and then generally there is an attachment. It is believed that some vendors are not looking at the attachment and therefore, rely solely on that short description for the information about the contract. If more information can be provided on the display page, it will better inform vendors about what is truly required for the contract.  *Concerns*:  The ten day open period and the time period needed by DES for approval expand this process to a time period that agencies and universities who may not be able to work with well due to quarter systems, and faculty, and student involvement.  Extra work involved responding to inquiries of the contract and sole source justification. Public inspection of contract and justification after the enterprise bid notification system posting needs to have some way to limit some of the extra work involved in providing information and documentation.  Recommendation #6: (Include in training) Provide vendor training so that they understand the new processes and guidelines regarding sole/best source & other procurement reform changes and how to access the information.   1. How will we ensure that the ten day *Public Inspection* period is honored?   *Recommendations*  Assumption already made under Posting Sole Source:  [🡨*Public Inspection* Period-announce availability---min. 10 days🡪]  [🡨Post for *Vendor Response*---3/5 days🡪]  [Response due by COB 3rd/5th day]  [🡨File Contract for *DES Approval*------------------------min. 10 days🡪]  Recommendation #1: Notice of availability for public inspection, the enterprise bid notification system posting period, and the DES review may run concurrently.   1. Assumption: The public inspection timeframe is to make the contract available for the public to inspect but not to challenge. The enterprise bid notification system posting timeframe is only for posting the contracting “opportunity” for vendor to challenge. 2. Question: Does public inspection require an agency to follow its public disclosure process if a request is made?   Recommendation #2: DES to standardize information required in the notice for availability of public inspection.   They will also make recommendations for determination of removal of notice.  Section 16(1) only requires agencies to post a sole source contract.  The intent of the legislation is to support efficiencies in procurement while encouraging competition as much as possible.  Including more information than what is required in the legislation to be posted undermines the efficiency of agencies and adds a reporting burden that is unfunded.  Agencies will retain for their records information regarding sole source justifications (e.g. sole source justification criteria; background and qualifications of contracting vendor; project scope; etc.)  4. What Sole Source Acquisitions should be *Exempt* from this process?  Recommendation #1: DES to provide written policies that spell out the process for requesting and granting an exemption to the requirements of this section.  We recommend the following contracts be exempt:   * Agency approved operational standards to ensure consistency and/or compatibility or interoperability (best practice would indicate this is reviewed every 10 years, or earlier if technology changes in that area). E.g. lab equipment that must be the same make and model to ensure consistency of test/research results between state and federal entities. * Research continuity * Named in Grant * Competition not appropriate (Guest speakers, performers, and artists when the selection is based on personal accomplishment or characteristics). Public events – example hiring a pianist to perform in conjunction with a separate contract for the pianist to give instruction at the college/university. * Software maintenance * Mandated fees, permits, licenses, accreditations, subscriptions (including on-line subscriptions) and memberships * Medical Surgical Decisions. A medical/surgical decision by a medical/dental professional, where a specific brand is required for patient care, and the manufacturer has no multiple distributors for the product.   (Note:  Buying staff are required to “verify” that the brand is only available from one source). Requestor is required to certify that the statement they provide is accurate when they submit a purchase request.   Often the physician/dentist was trained on a particular device/brand or the clinic has standardized on a particular brand either through an evaluation process or other means of selecting the brand.   * Goods and services that are trademarked or copyrighted and can only be purchased from one source * Contracts where the funding source (including budget provisos) dictates with whom the agency shall contract. * Special category request where a department determines that a significant number of repeat sole source contracts for a particular category of goods and services will occur during a specified period of time. * DES excludes Purchase Orders from Sole Source requirements until 1) DES works with statewide stakeholders and establishes Purchase Order guidance, and 2) DES has a statewide E-Procurement system to manage Sole Source Purchase Order compliance. * DES continues the “Delegated Purchases Exempt from Competition” from the current DES Washington Purchasing Manual Section 7.2. under either Sole Source exemptions or through Competition Exempt exemptions. * Partnerships with key non-profit tribal organizations to develop programs and services that are vital to the citizens of the State of Washington. Such organizations include, but are not limited to:   + American Indian Health Commission (AIHC)   + South Puget Intertribal Planning Agency (SPIPA)   + Northwest Portland Area Indian Health Board (NPAIHB)   + Northwest Tribal Emergency Management Council (NWTEMC)   + United Indians of All Foundation   + American Indian Community Center * Collaborative Research/Collaborative Partnerships: Not all grants are for research and development. Sometimes federal funds provided through grants are required to have state match funds and the resulting contracts would be a combination of state and grant money. For example, DOH works closely with the Washington Hospital Association who has established relationships with all the hospitals in WA State, and their staff. They have the level of expertise & staff capacity to quickly provide recommendations & assessments. Leveraging their expertise allows DOH to pass along more direct funding to the hospitals.   Recommendation #2: Urgent/Emergent vs. Emergency situations. An exemption from competitive process and from sole source posting requirements and guidelines for emergent situations that present real emergent situations that would result in damage to property, security, bodily injury or loss of life if immediate action is not taken (Whooping cough, swine flu epidemic, personal security situations, storm preparation, and other preparatory actions). This would be for situations that would not be the norm – buying sand every year for icing roads vs. 100 year floods, and public health issues (pandemic, epidemic, and shellfish biotoxin response efforts) that are known to be looming but have not “hit” yet.  Recommendation #3: DES Director has the ability to grant exemptions for agencies based on each agency’s GEORGE rating. For instance, highly capable agencies that have demonstrated alternative methods that meet the intent of the legislation as it relates to sole source posting, advertising, etc.  5. HIGHER EDUCATION CONCERNS  Concern #1: How does DES authority affect four year institutions of Higher Education authority in RCW 28 B.10.029?  Research: The norm around the country is for University sole source approvals being handled at the university or for higher dollar amounts, University system (Chancellor’s office) level and not the state agency level. (Virginia, California, Idaho, Pennsylvania, Georgia, South Carolina, Nebraska, Utah, Oregon (posted 7 days) Montana , Arkansas, Kansas, Ohio, Arizona, New Mexico, Alaska, Texas, Nevada , Colorado However, there are many cases where reporting is required at the state level.  The exceptions found were: Wisconsin, over $25,000 approved by Governor; Illinois only sole source consulting agreements over $25,000 submitted to state; North Carolina only if over $100,000; Maine, over 1 million, New York over $125,000.  Recommendation: DES to delegate the authority to manage and monitor sole source contracts to the four year institutions of Higher Education. Institutions to establish internal policies, procedures and training to ensure sole source contracts comply with DES guidelines.  6. ADDITIONAL CONSIDERATIONS  Recommendation #1–The legislature to provide resources to ensure state agencies are able to properly execute duties and to support the intent of the legislation (staffing, systems development, training, etc).  Recommendation #2 – (Include in both training & policy) Sole sourcing is not appropriately justified and justifiable when used as a method to avoid a competitive process or to select a preferred supplier, this restricting opportunities.  Recommendation #3 - That DES will have an efficient and timely approval/reject process in place.  Recommendation #4 - Long Range Considerations- Formal review of the 10 day timeframe for a more efficient way to meet the legislative intent. If the intent of the legislature for the ten day period was to provide an opportunity for potential vendors/contractors to challenge a sole source decision then the ten notice period should be for the opportunity time period in order to provide a place to challenge the sole source. A standard form could be provided; the form posted on the enterprise bid notification system and if there was not challenge then the procurement could proceed and there would be no need for DES approval – DES could review the sole source postings on the enterprise bid notification system.  Recommendation #5 - Amendments do not need to be posted, but they will have to be filed with DES and will need to be approved. Administrative amendments to be handled as they are now for Personal Services Contracts.  Recommendation #6 – DES to provide guidelines for analysis of when a sole source contract would need to have undergone additional market analysis to ensure that it still meets sole source justification.  **Recommendation #7 **– DES to provide sample contract clause related to the requirement for DES approval prior to start of work. The intent would be to provide agencies standard language to use when executing sole source contracts and amendments.**** |

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| Sole Source Work Group  Public Inspection Recommendation |
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| Sole Source Work Group  Sole Source Justification Recommendation |
| 2SHB2452 Reference:  NEW SECTION Sec.2 DEFINITIONS, subsection (22)  NEW SECTION Sec. 14 COMPETITIVE SOLICIATION – EXCEPTIONS  NEW SECTION Sec. 16 SOLE SOURCE CONTRACTS  NEW SECTION Sec. 23 TRANSPARENCY   |  | | --- | | Recommendation #1 – Statewide policy include the following suggested language.  Recommendation #2 – Standardized statewide Sole Source Justification requirements for agencies.  Through a variety of statutory authorities and results-oriented policy initiatives, the State of Washington seeks to ensure the acquisition system provides the best value to the taxpayer.  Current priorities are designed to provide for a better skilled and more agile workforce, consistent and effective use of competition, contract government’s buying power, and a data system that gives managers and vendors the information they need to evaluate results and plan effectively for the future.  **SOLE SOURCE** means a contractor providing goods or services of such a unique nature or sole availability at the location required that the contractor is clearly and justifiably the only practicable source to provide the goods or services.  **STATE EMPLOYEES:**  A complete justification should be provided and include as much information as possible for the vendors who may be interested. If a complete justification is not done, vendors have the right to call and question and even challenge the sole/best source and request a bid be done.  **VENDORS:**  Vendors are the State’s best resource to monitor the sole/best source contracts. If the sole/best source contracts are justifiable there shouldn’t be a lot of questions or attempts to challenge the sole/best source. Agencies wishing to sole/best source contracts need to be able to justify their decisions and if vendors do not feel they have sufficient information they have every right to call and get more information. If a vendor believes that they can provide the services and are willing to commit to completing a competitive proposal if it’s opened for bid, they may challenge the sole/best source and request a bid be done.  For the best source contracts, these are proposed for agencies that have been contracting with a vendor who is familiar with the work in such a manner that can be justified as a cost savings to taxpayers to maintain this vendor for these services. This will prevent bids being posted and vendors spending time and money preparing proposals for bids that are will most likely go to a best source vendor. The agency must identify how the experience is more cost effective to the agency. However, vendors may still call for more information and may challenge and request a bid be done if they feel they can commit to a competitive proposal.   1. **PUBLIC INSPECTION NOTIFICATION**   The following information is being released identifying a contract with a Washington State Agency that has been determined to be a sole/best source contract.  **Sole Source Award**  State Agency:  Name of Contractor:  Contract Amount:  Funding Source:  Contract Duration:  Description of Services:  For more detailed information…….see the quarterly contract report notifications…..  The following will be the posting requirements for filing with DES **and** posting on the Washington State electronic bid system. Filing with DES a minimum of 10 business days prior to effective date of the contract is required. Approval from DES is required before contract can be binding.  Posting on WEBS is required for a minimum of five (5) business days during which any vendor may respond.  Attached will be a copy of the Contract in its entirety unless the contract contains personal or proprietary information or endanger public safety and a copy of the Public Inspection Notification. If the entire contract cannot be posted, the general terms and conditions as well as the budget will be available and as much information on the scope of work as is possible.   1. **SOLE SOURCE CRITERIA JUSTIFICATION**    1. **Unique characteristics** – Describe the unique qualifications, abilities or expertise of the contractor to meet the agency needs and/or describe the unique nature of the services. Unique qualifications or services would be those that are highly specialized or one-of-a-kind. Other factors that may be considered include past performance, cost-effectiveness (learning curve), and/or follow-up nature of the required services. Past performance alone does not provide adequate justification for a sole source contract.    2. **Special circumstances** – Provide a description of any other special circumstances that may be relevant such as confidential investigations, copyright restrictions, time constraints, or sole availability at the location required.    3. **Time constraints** – If time constraints are applicable, identify when the agency was on notice of the need for the services, the entity that imposed the constraints, explain the authority (if not obvious) of that entity to impose them, and provide the timelines for work to be accomplished.    4. **Geographic limitation** – If the proposed contractor is the only source available in the geographical area, state the basis for this conclusion and the rationale for limiting the size of the geographical area selected.    5. **Best Source -** is defined as a contract where the vendor/contractor has previous experience with the agency that gives their services a cost advantage for taxpayers that can be substantiated. 2. **BEST SOURCE CRITERIA**   Attached a copy of the Contract in its entirety unless the contract contains personal or proprietary information or endanger public safety. Sole/Best contractors may request their statement of work not be posted.  Best Source Criteria Justification   * 1. **Unique characteristics** – Describe the unique qualifications, experience, abilities or expertise of the contractor to meet the agency needs and/or describe the nature of the services. Identify how the unique experience or qualification allow for less risk and cost for the agency than beginning with a new vendor. Other factors that may be considered include past performance, cost-effectiveness (learning curve), and/or follow-up nature of the required services (best source).   2. **Special circumstances** – Provide a description of any other special circumstances that may be relevant such as confidential investigations, copyright restrictions, time constraints, previous developments, or availability at the location required.   3. **Time constraints** – If time constraints are applicable, identify when the agency was on notice of the need for the services, the entity that imposed the constraints, explain the authority (if not obvious) of that entity to impose them, and provide the timelines for work to be accomplished.   **VENDOR INQUIRIES FOR MORE INFORMATION ARE WELCOME:**   * Vendor may contact agency staff listed in the posting, for more information. * Vendor may submit information that supports the fact that this is not a sole/best source contract.   **VENDOR CHALLENGE:**   * In the principle of maintaining integrity in Washington State procurement Vendors have the ability to monitor sole/best source contracts and contact DES and/or the agency posting the sole/best source at any time they feel a sole or best source contract is not valid. Be prepared to substantiate your claim with valid information and documentation. * If a Vendor would like to substantiate their ability to provide these services in a time and cost effective manner as set forth in the attached draft contract they should first contact the agency and discuss this in detail. Vendor is willing to commit to preparing a competitive proposal if these services and would like to request the service be put out for competitive bid. * Vendor acknowledges and will be advised of the risk of debarment if they misrepresent their ability to meet the contract requirements or fail to submit a proposal if a subsequent bid is released at their request. * Vendor’s may also risk debarment if they continually call in a manner that is not depictive of interest in the services, but questioning numerous sole/best source posting that they are not qualified to competitively bid on.   **(Susan & Claudia)**   1. Purchase orders should not included in this process   (Melanie & Teresa)  Replicate California’s Justification form. I have attached it here.  (Jolena)  Recommendation – Two different types of Justifications.   1. Sole Brand-Vendor provides sole provider letter. 2. Sole Source-   Sole-Source Purchase Justifications  Exclusive or Unique Capabilities  Example 1: Only one supplier can satisfy the technical requirements because of unique technical competence or expertise.  Example 2: Only one supplier possesses patents or exclusive rights to manufacture or to furnish the item or service.  Excessive Cost  Example 3: Only one supplier can furnish the services because of the supplier’s previous state entity experience and having an alternative source duplicating these capabilities would result in excessive costs to the state entity.  Example 4: The item does not satisfy any of the justifications noted above, but the use of any other manufacturer’s good or equipment would result in excessive costs to the state entity. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)  **(Debby)**  Other state purchasing models and purchasing experts in Washington State. Vendor input and opinions both in the surveys and the work group input.  **(Susan & Claudia)**  RCW 28B.10.029  The norm around the country is for University sole source approvals being handled at the university or for higher dollar amounts, University system (Chancellor’s office) level and not the state agency level. (Virginia, California, Idaho, Pennsylvania, Georgia, South Carolina, Nebraska, Utah, Oregon (posted 7 days) Montana , Arkansas, Kansas, Ohio, Arizona, New Mexico, Alaska, Texas, Nevada , Colorado However, there are many cases where reporting is required at the state level. Frankly, I did not check all states, but could.  The exceptions found were: Wisconsin, over $25,000 approved by Governor; Illinois only sole source consulting agreements over $25,000 submitted to state; North Carolina only if over $100,000; Maine, over 1 million, New York over $125,000.  (Melanie & Teresa)    (Jolena)  See sample forms from GA.  SPD-PS019SoleBrandJustificationForm  SPD-PS020SoleSourceIntentToAwardJustificationForm | | Assumptions / Pre-requisites / Dependencies:  **(Debby)**  Assuming that the newspaper ads are not used as readily now-a-days as the electronic systems due to the fact that many newspapers are closing. However large contracts (define) may have interest from vendors from other states and countries that will not normally be on the Washington electronic bid system.  **(Susan & Claudia)**   * That the Universities will have a process in place for documenting, approving and storing information about sole source contracts. * That the Universities will comply with the 10 working day requirement as it currently exists, excluding contracts deemed exempt. * That the Director of DES will approve exemptions within a defined time period. * Clarify what level of detail regarding a contract is posted for public inspection. * That DES will have an efficient and timely approval/reject process in place. * There will be a streamlined reporting process to the state. * Reduce the amount of increased work DES will receive due to this change in law. * This streamline process will assist with the timing issues that Institutions of Higher Education on a quarter system are concerned with in the new law. * If Purchase Order submission is required to DES, we will have to enter the purchase order into the system and it is possible a PO could be sent to a vendor in error ahead of approval.   (Melanie & Teresa)  N/A | | Discussion of anticipated benefits:  **(Debby)**  Vendors will get more detailed information on the sole/best source contracts and will allow them an opportunity to get more information and/or request a bid if they truly can compete.  Vendors will get notification that there is a best source and won’t waste their time bidding on contracts that are technically weighted for best source vendors but can challenge the contract if they truly can compete.  Vendors will have an opportunity to challenge and request a bid for the sole/best source but will have consequences to wasting agency time if they aren’t valid requests. Vendors will be encouraged to be monitor sole/best source contracts and question whenever there isn’t sufficient information to conclude a sole/best source is appropriate. The vendors who are interested should be encouraged to read the entire contract prior to contacting the agency to keep time and cost to state employees to a minimum. The agencies (DES) will be able to keep vendors from challenging every bid for no valid reasons.  **(Susan & Claudia)**   * Reduce the amount of increased work DES will receive due to this change in law. * This streamline process will assist with the timing issues that Institutions of Higher Education on a quarter system are concerned with in the new law. * If Purchase Order submission is required to DES, we will have to enter the purchase order into the system and it is possible a PO could be sent to a vendor in error ahead of approval.   (Melanie & Teresa)  N/A | | Discussion of anticipated concerns:  **(Debby)**  Let the vendors be the judge and allow them to request a bid if they really believe they can bet out the competition. There may be situations where, initially, vendors will try to challenge or call on the postings, but this should taper off especially as agencies learn to post adequate information.  **(Susan & Claudia)**   * Vendor community may have concerns, but as long as there is a process for posting and input this should be alleviated. * Posting too much detail regarding a proposed contract may actually compromise the integrity of the process. It is assumed that pricing would not be disclosed. * A vendor may claim the ability to perform the work and or provide the required service resulting in additional costs to the state/agency/institution. * A documented/detailed protest/challenge process must exist. * Would DES staff have the specialized knowledge and resources to validate or reject sole source contracts based on requirements that may be unique to institutions of higher education.   (Melanie & Teresa)  N/A | | List of alternate approaches:  **(Debby)**  Include a means of allowing vendors to post questions and concerns in reference to a sole/best source posting. If they don’t necessarily feel that they could do the job or don’t want to make waves, but think the posting is inadequate with respect to the information provided. This would give the agency the ability to amend the posting to a more appropriate justification and DES could refuse to approve based on vendor input.  **(Susan & Claudia)**   * Allow 4 year higher education institutions to create their own process for posting and publishing sole source contracts on their respective webpages.   (Melanie & Teresa)  N/A | |

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| Award Work Group  Reject BAFO Award Recommendation |
| 2SHB2452 Reference: NEW SECTION Sec.18 Award |
| Cancellation: Make sure that agencies are free to cancel for any reason. Don’t try to limit or list the circumstances in which a procurement can be cancelled. Include broad language from RCW or other procurements in the procurements.  BAFO #1: Policy should provide some guidance on the substance of a BAFO; what requirements within the RFx can be altered by bidders during the BAFO process. Should not be limited to just price (should always be available), but should probably be less than the full RFx; allow agencies to explore options or alternatives suggested by bidders to determine the best value for the State. Policy needs to allow for significant flexibility given the types of procurements available and the wide array of goods and services consumed by the State. Be at the “guideline” level and offer agencies some best practices, but falls short of mandating what agencies can do.  BAFO #2: Policy should define process of conducting a BAFO procurement; possibly limit the number of bidders that could submit a BAFO; establish time frame for it to be concluded; determine how to align this timing with the ASV announcement and contract negotiations (guidelines). This should be spelled out very clearly in the procurement documents (rule).  BAFO #3: Defining a set of criteria where BAFO would be permissible (e.g., all bids exceed budget).  “Responsible Bidder” #1: List of items listed in the bill are all rather vague; policy should attempt to provide clear, specific standards or criteria/template that agencies need to use in making this determination (e.g., financial health of bidders, appropriate scope of prior experience considered). Develop a risk assessment that can be used in procurements; application of standards would vary based on risk. Put at “guideline” level to allow for flexibility.  “Responsible Bidder” #2: Policy might consider establishing a (baseline) process for making this determination (e.g., make this determination first or do it as part of the overall evaluation of a bidder). Also, consider whether or how these factors will vary depending on the type of procurement or the goods or services being acquired. Add documentation requirements in determining if a bidder is “irresponsible.”  “Responsible Bidder” #3: Create a central repository of information about contractors so that agencies can review performance evaluations.  References Supporting Primary Recommendation  [NEED SOMETHING HERE]  Assumptions / Pre-requisites / Dependencies  BAFO #1: Adequate training of procurement personnel to make appropriate judgment call on when to use BAFO;  Discussion of Anticipated Benefits  BAFO #1: Opportunity to use BAFO to get best value for the state while providing safe harbor to do so if certain decisions in the BAFO process are protested (e.g., a certain vendor was not offered an opportunity to submit/discuss a BAFO). Flexibility to use only in circumstances where it makes the most sense. [Should the policy also list some criteria or provide some guidance on when to use BAFO?]  BAFO #2: Limit the amount of resources (time and money) invested in a BAFO  “Responsible Bidder” #2: For documentation, provide stronger record in the event the decision is challenged.  List of Alternate Approaches  “Responsible Bidder”: Do nothing via policy because agencies are already considering these factors in conducting their procurements (i.e., are already in compliance with the new law). |

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| Award Work Group  Complaint and Protest Process Recommendation |
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If a bidder submits such a challenge too late but prior to the bid due date, the state (at its sole discretion) should be given the opportunity to consider.  *Note: Sometimes a fatal flaw may not be uncovered until just before the bid closes and in such cases the state might want to consider the challenge. However, there have been instances when a bidder endeavors to delay the bid closing by submitting a protest at the last minute. Accordingly, I believe this recommendation would resolve.*  Additionally, absent any such challenge all bidders should be on notice that the state will construe as acceptance of the solicitation and therefore the bidder waives any right to challenge.  Adopt DIS complaint process.  **Challenging sole source determination**  The award team was asked if a vendor should be able to challenge a sole source contracting decision. Accordingly, if all sole source contracts must include in the process an intent to sole source notification be posted on WEBS and no vendor challenges the sole source determination according to the definition (found in HB 2452, sec. 2, item 22) then, the sole source determination cannot be later challenged. However, if a vendor challenges the agency’s intent to sole source determination and the agency rejects the vendor’s petition, the vendor should be given the opportunity to challenge the agency’s decision to deny and the DES sole source approval team should be made aware and consider the challenge in sole source approval process before rendering a final decision that cannot be further challenged.  **Protest Submission Form**  In an effort to streamline the response to a protest and to reduce frivolous protests (or rambling rants), it is recommended that a protest submission form be developed and completed by the protestor. The form should capture all the needed information necessary for the state to issue a response. The protestor would be required to check the box of the eligible criteria for protest, succinctly state each issue, provide a more detailed explanation and attach any relevant supporting documentation.  **Protests (after ASB has been announced)**  After the announcement of the ASB, bidders should be able to protest the following:   * + A matter of bias, discrimination, or conflict of interest on the part of an evaluator;   + Errors in computing the scores; or   + Non-compliance with procedures described in the procurement document or agency policy.   Nonetheless, unsuccessful bidders will no doubt still submit a protests protest for criteria other than that listed above. Therefore, included in the policy should be guidelines for how such protests are to be handled. If not, there is a tendency to expend significant amount of time and resources responding to protests that don’t meet the protest eligibility criteria.  **Mandatory Debrief prior to submitting a protest**  It is recommended that a debrief conference (whether in person or otherwise) should a precondition to submitting a protest. Also, it is recommended that a bid protest must be submitted within 5 business days following the vendor’s debriefing.  **WTO Protests**  It is recommended that the protest policies align with WTO protest requirements. Specifically and if at all possible, the WTO protest requirements should not apply unless a vendor from a WTO member nation can argue that the solicitation unjustly discriminates and or restricts foreign participation.  **Federal Protests**  It is recommended that the protest policies align with [Federal protest guidelines](https://www.acquisition.gov/far/current/html/FARTOCP33.html) as many purchases by the state utilize federal dollars.  **Tie Bid Protests**  Not sure where else to put this but there have been on a few occasions as of late where there have been tie bids and we really don’t have any guidance regarding how to handle. Therefore, it is recommended that a policy be developed regarding how tie bids will be handled. As I understand, the best practice for handling is to utilize a game of chance (i.e. coin toss) which includes witnesses to validate the results. Policy: must include how to address a “tie bid.” Guideline: best practices on how to do so and how to define a “tie bid.”  **Protest Bonds**  If as a result of implementing the recommended improvements to the protest policies, there is still an unacceptable volume of frivolous protests, it is recommended that all protests either be accompanied with a non-refundable (unless vendor “wins”) but nominal uniform protest bond, or a significant but refundable protest bond. In so doing, it is believed that if a vendor has some “skin in the game” that this should reduce the volume of protests but not unjustly discourage bidders from posing a legitimate challenge. Require that any protest bond process be spelled out in the procurement document. Need to address how agencies without “receivables accounts” can deal with this. Guidance on determining the amount of the bond (e.g., related to size of the procurement). | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)  *WAC* [*200-300-130*](http://apps.leg.wa.gov/wac/default.aspx?cite=200-300-130)*, WAC* [*200-300-135*](http://apps.leg.wa.gov/wac/default.aspx?cite=200-300-135)*, WAC* [*200-300-140*](http://apps.leg.wa.gov/wac/default.aspx?cite=200-300-140)*, SAAM* [*15.20.30*](http://www.ofm.wa.gov/policy/15.20.htm#15.20.30)*.p* [*ISB Policies*](http://ofm.wa.gov/ocio/policies/documents/201S.pdf)*--* *Resolution of Complaints and Protests (page 10-15). See WTO protest guidelines and GAO guidelines in SharePoint Library in the Award/Complaint and Protest file folder.* | | Assumptions / Pre-requisites / Dependencies:  **Assumptions**  After spending untold time and resources preparing a bid response, to later learn that one of your competitors will be awarded the contract by way of a letter or computer generated email is both inadequate and insulting.  If it’s easy to submit a protest and vendors has to lose by doing so, chances are that the state will continue to unnecessarily tie up valuable resources responding to frivolous protests.  In general, the amount of time and resources required by the state to respond to a protest is about the same regardless of the value of the contract.  At least 40 hours of staff time (responding to public records request, reviewing documentation, meeting with key players, drafting a response, legal review and formalizing a response) is needed to respond to even the most frivolous protest. Moreover, when the award is delayed because of a protest the impact to the state can even more significant depending upon the scope of the contract.  Establishing a protest bond dollar amount that is commensurate to the cost of responding to most basic protest would not only be consistent with the cost recovery language found in HB 2452 Section 6 item (2) but would also deter vendors from submitting frivolous protests. | | Discussion of anticipated benefits:  Any reduction of frivolous protests will result in meaningful cost avoidance savings to the state.  Requiring that the unsuccessful bidder must attend a mandatory debriefing meeting will:   * Humanize the bid process. * Provide vendors a cooling off period before having their concerns addressed. * Encourage purchasing staff to be even more thorough in their evaluation and award process. * Minimize the volume of frivolous protests and thereby save the state money. * Minimize purchasing delays. | | Discussion of anticipated concerns:  We should expect that the vendor community and especially small business will likely voice concern to the use of protest bonds.  Need to define what constitutes “flawed” or “unfair” evaluations or what is a actionable restriction on competition. | | List of alternate approaches: | |

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| Award Work Group  Best Value Criteria definition and rules for use recommendation |
| |  | | --- | | **2SHB2452 Reference: NEW SECTION Sec.18 Award*(3) In determining the lowest responsive and responsible bidder, an agency may consider best value criteria, including but not limited to:***  ***(a) Whether the bid satisfies the needs of the state as specified in the solicitation documents;***  ***(b) Whether the bid encourages diverse contractor participation;***  ***(c) Whether the bid provides competitive pricing, economies, and efficiencies;***  ***(d) Whether the bid considers human health and environmental impacts;***  ***(e) Whether the bid appropriately weighs cost and non-cost considerations; and***  ***(f) Life-cycle cost.***  ***(4) The solicitation document must clearly set forth the requirements and criteria that the agency will apply in evaluating bid submissions.*** | | **Recommendation: define “best value.”**  Best value is the most advantageous balance of price, quality, performance, and environmental protection achieved through competitive procurement methods over the life of the purchased good or service.  **Recommendation: solicitation must include statement of needs**  The first requirement of a best value contract (section 18) is that the need must be satisfied. Therefore, all best value contracts should include a detailed statement of needs.  **Recommendation: develop intent statements for the terms “diverse contractor participation”; “competitive pricing, economies, and efficiencies,” and “cost and non-cost considerations.”**  Clarify if “diverse contractor participation” is about supporting diversity goal or about maximizing competition and not “wiring” bids for one vendor.  “Competitive pricing, economies, and efficiencies” means we aren’t necessarily looking for the lowest initial purchase price, that there may be soft cost efficiencies/life-cycle considerations that impact the true cost of a good or service over time.  Appropriately weighing “cost and non-cost considerations” means having a reliable, systematic, quantifiable tool able to measure best value criteria. (DES has developed a best value calculator to meet this need.)  **Recommendation: distinguish between “responsible bidder” and “lowest responsive and responsible bidder.”**  In general, a responsive bidder conforms to all the requirements outlined in the solicitation (e.g. submitted a timely response, did not take exception to the contract terms, etc.) A responsible bidder is one that is capable of fulfilling the contract terms (e.g. has necessary staff, financial resources, history of past performance). However, just because a bidder is responsive and responsible and proposes the lowest price doesn’t necessarily mean that their good or service represents the best value to the state. To achieve best value, we must look at other factors beyond a vendor’s capability of fulfilling contract terms. That’s where the best value criteria become relevant.  **Recommendation: clarify when purchases “may consider” or “must consider” human health and environmental impacts.**  To achieve best value for Washington’s taxpayers, and to meet the intent of 2SHB2452, the state should buy green goods and services whenever such goods and services are comparable in quality, availability, and cost to traditional ones.  Circumstances in which purchases must consider human health and environmental impacts under Section 18 (2)(f) should include:   * When establishing state contracts for goods * When establishing state contracts for services, when those services use goods as part of their service that may cause harm to human health or the environment. * When purchasing items containing chemicals or metals of concern already restricted, banned by law or executive order, or listed by the Department of Ecology, including but limited to:   (a) Persistent, bioaccumulative toxic chemicals and metals of concern as found in chapter 70.105 RCW;  (b) Polybrominated diphenyl ethers as described in chapter 70.76 RCW;  (c) Mercury or mercury-contained products as described in chapter 70.95M RCW;  (d) Lead wheel weights for vehicles as described in chapter 70.270 RCW;  (e) Copper in vehicle brake pads as regulated by state law;  (f) Bisphenol A as regulated by state law;  (g) Chemicals of high concern to children, as described in chapter 70.240 RCW, when contained in goods or services that may reasonably impact children;  It would be helpful to provide guidance on circumstances – perhaps such as emergency purchases or certain services – when not considering best value criteria, such as human health and environmental impacts, makes sense.  **Recommendation: define “environmentally preferred” goods and services**  A working definition of “environmentally-preferred is key to knowing whether the bid considers human health and environmental impacts and life-cycle costs.  The state should lead with EPA’s definition: "Environmentally preferred" goods and services are defined by EPA as having lesser or reduced effect on human health and the environment when compared with competing goods or services that serve the same purpose, as applied to raw materials, manufacturing, packaging, distribution, use, reuse, operation, maintenance, and disposal over the useful life of the good or service.  “Environmentally-preferred should also means those goods and services that:  (i) Are certified by nationally or internationally recognized environmental certification organizations or other state, national, or international experts where no certified standard exists, as determined by the department of ecology;  (ii) Consider life cycle costs; and  (iii) Avoid use of substances already banned and minimize the use of chemicals or metals of concern in Washington (see previous list above)  **Recommendation: provide additional guidance on life cycle costs**  Whenever there is reason to believe that applying the "life cycle costing" technique to bid evaluation would result in lowest total cost to the state, first consideration shall be given by state purchasing activities to the bid with the lowest life cycle cost which complies with specifications.  Whenever possible, to minimize “re-inventing the wheel” when it comes to analyzing/determining life-cycle costs, national or international environmental certifications should be used.  Best value should take into account total cost of ownership and should include “value-added” beyond basic pricing, including life cycle elements such as: Delivery, handling, return policy – restock charges, error rates – back-orders etc., vendor experience/expertise (higher hourly rates but significantly less time = better value), training – included at no charge, warranties/guarantees – cost of extensions, service costs, payment options and discounts, trade-ins (buy backs), disposal after useful life, service level agreements (response times for problems/inquiries/etc.)  Additional life cycle elements that may be important to consider include: greenhouse gas, energy, and water impacts; the amount of toxic, persistent or bio-accumulative chemicals used, disposed of, or consumed; waste and packaging; and postconsumer and overall recycled content, reuse, or recycling.  **Recommendation: drive the use of best value contracts**  State agencies should buy environmentally preferred products and services whenever they are comparable in quality, availability, and price. When contracts are established with environmentally preferred attributes or accreditations, state agencies shall use those contracts unless the agency notifies DES that the good or service on the contract does not meet a specific business need. (If the “best buy” clause still exists within 2SHB2452, we should raise the bar on its use).  **Recommendation: applicability of these rules/guidance.**  Local governments, higher education institutions, K-12 schools, and school districts are encouraged to consider best value criteria and buy from established best value state contracts.  **Recommendation: disclose chemicals and metals of concern in purchased goods and services.**  Vendors should not knowingly supply goods and services intentionally using or adding chemicals or metals of concern during the manufacture of those goods and services without disclosing this information during the bidding process, as existing contracts expire and are renewed, or as new contracts are otherwise established. Model language should be included in the DES bid templates. Maybe distinguish between durable and non-durable goods.  If the vendor/state discovers use of chemicals or metals of concern later, the state can ask for a supplier that supplies a greener/safer alternative comparable in quality, availability and price.    **Recommendation: align rules/guidance with feds.**  Where practicable and consistent with the state best value criteria and guidance, state purchasing should support federal purchasing directives, such as Executive Order 13154 signed in October 2009 by President Obama. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)  Best value:  <http://architecture.mt.gov/content/designconstruction/docs/Best_Value_Definition.pdf>  Executive Order 13154: <http://www.whitehouse.gov/the_press_office/President-Obama-signs-an-Executive-Order-Focused-on-Federal-Leadership-in-Environmental-Energy-and-Economic-Performance>  The state/local links listed below contain potentially useful language:  CA DGS link on EPP has good language in the Policies, Laws, and Striving for Best Value sections:  <http://www.dgs.ca.gov/buyinggreen/Home/BuyersMain.aspx>  CA Purchasing Authority Roundtable (PART) is an interesting model for procurement reform process that involves multiple stakeholders:  <http://www.dgs.ca.gov/pd/Resources/PurchasingAuthorityRoundTable.aspx>  Maine has some language on EPP structure and metrics:  <http://www.mainelegislature.org/legis/statutes/38/title38sec343-H.html>  Massachusetts Executive Order Section 4 outlines a Environmental Purchasing Advisory Committee that has been very effective:  <http://www.mass.gov/anf/budget-taxes-and-procurement/procurement-info-and-res/procurement-prog-and-serv/epp-procurement-prog/publications-rpts-and-tools/>  Pennsylvania  <http://files.dep.state.pa.us/Energy/Governor's%20Green%20Governance%20Council/GGGCPortalFiles/Pt%20I%20Ch%2022%20Green%20Procurement.pdf>  New York City Rules:  <http://www.nyc.gov/html/mocs/html/programs/epp.shtml>  Attached is some of the previous work that GA and Ecology did on this issue, including a fact sheet on best value and green purchasing, as well as an early and later version of a joint agency request bill addressing best value. | | Assumptions / Pre-requisites / Dependencies:  Green products are cost competitive and help create a healthy and safer environment for Washington citizens.  Most current best value definitions do not include consideration of environmental and human health as a foundational criterion, which differs from the intent of 2SHB2452, which includes consideration of environmental and human health as a best value criterion.  Washington’s revised state purchasing law asks government to consider the environmental attributes of the goods and services it buys, including whether products contain chemicals most likely to harm people or the environment.  To achieve best value for Washington’s taxpayers, and to meet the intent of 2SHB2452, the state should buy green goods and services whenever such goods and services are comparable in quality, availability, and cost to traditional ones.  Whenever there is reason to believe that applying the "life cycle costing" technique to bid evaluation would result in lowest total cost to the state, first consideration shall be given by state purchasing activities to the bid with the lowest life cycle cost which complies with specifications.  Because a bidder is responsive and responsible and proposes the lowest price doesn’t necessarily mean that their good or service represents the best value to the state. To achieve best value, we must look at other factors beyond a vendor’s capability of fulfilling contract terms. That’s where the best value criteria become relevant. | | Discussion of anticipated benefits:  The purchase price of many of today’s green products is the same or less when compared to traditional products.  Recognizing that industry is always poised to find innovative solutions to satisfy an unmet need, Washington State wants to further stimulate access to innovative green alternatives by requiring purchasing practices that regularly consider green goods and or services.  By incorporating the consideration of green alternatives in everyday purchasing practices, Washington State will not only stimulate a green economy but also positively impact our environment and government operations.  By effectively leveraging Washington’s purchasing power, Washington can promote new market development and introduce even more competitively priced green or environmentally preferred alternative products and services. | | Discussion of anticipated concerns:  Without clear guidance, agencies may consider human health and environmental impacts an optional part of best value.  We want to use established, reputable third party environmental certifications whenever possible, to avoid purchasers having to determine this on their own.  There is a remaining perception that green products cost more and perform worse than traditional products. | | List of alternate approaches: | |

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| Award Work Group  Responsible Bidder Criteria Recommendation |
| 2SHB2452 Reference: NEW SECTION Sec.18 Award*(3) In determining the lowest responsive and responsible bidder, an agency may consider best value criteria, including but not limited to:*  *(a) Whether the bid satisfies the needs of the state as specified in the solicitation documents;*  *(b) Whether the bid encourages diverse contractor participation;*  *(c) Whether the bid provides competitive pricing, economies, and efficiencies;*  *(d) Whether the bid considers human health and environmental impacts;*  *(e) Whether the bid appropriately weighs cost and non-cost considerations; and*  *(f) Life-cycle cost.*  *(4) The solicitation document must clearly set forth the requirements and criteria that the agency will apply in evaluating bid submissions.* |
| Primary Recommendation  BAFO #1: Policy should provide some guidance on the substance of a BAFO; what requirements within the RFx can be altered by bidders during the BAFO process. Should not be limited to just price, but should probably be less than the full RFx; allow agencies to explore options or alternatives suggested by bidders to determine the best value for the State. Policy needs to allow for significant flexibility given the types of procurements available and the wide array of goods and services consumed by the State.  BAFO #2: Policy should define process of conducting a BAFO procurement; possibly limit the number of bidders that could submit a BAFO; establish time frame for it to be concluded; determine how to align this timing with the ASV announcement and contract negotiations.  “Responsible Bidder” #1: List of items listed in the bill are all rather vague; policy should attempt to provide clear, specific standards or criteria that agencies need to use in making this determination (e.g., financial health of bidders, appropriate scope of prior experience considered). Develop a risk assessment that can be used in procurements.  “Responsible Bidder” #2: Policy might consider establishing a (baseline) process for making this determination (e.g., make this determination first or do it as part of the overall evaluation of a bidder). Also, consider whether or how these factors will vary depending on the type of procurement or the goods or services being acquired. Add documentation requirements in determining if a bidder is “irresponsible.”  References Supporting Primary Recommendation  [NEED SOMETHING HERE]  Assumptions / Pre-requisites / Dependencies  BAFO #1: Adequate training of procurement personnel to make appropriate judgment call on when to use BAFO;  Discussion of Anticipated Benefits  BAFO #1: Opportunity to use BAFO to get best value for the state while providing safe harbor to do so if certain decisions in the BAFO process are protested (e.g., a certain vendor was not offered an opportunity to submit/discuss a BAFO). Flexibility to use only in circumstances where it makes the most sense. [Should the policy also list some criteria or provide some guidance on when to use BAFO?]  BAFO #2: Limit the amount of resources (time and money) invested in a BAFO  “Responsible Bidder” #2: For documentation, provide stronger record in the event the decision is challenged.  List of Alternate Approaches  “Responsible Bidder”: Do nothing via policy because agencies are already considering these factors in conducting their procurements (i.e., are already in compliance with the new law). |

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| Award Work Group  Identify Successful Bidder In System Recommendation |
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| Award Work Group  Release of Bid Documents Recommendation |
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What we are protecting is the integrity of the solicitation process and the transparency of the process to the vendors and public. Vendors still be able to file suit for prior solicitationif2nd solicitation is within statute of limitations.* * *When should bid submittals be released if the solicitation has been canceled and won’t be replaced?* * *After cancellation. Vendor should be told that their documents will be available through the Public Records Act and it is incumbent upon them to seek protection, if possible. The State should not be required to provide notification of a request for documents but may in their sole discretion do so.* * *Sometimes OSP will include language in the solicitation indicating that the apparent successful bidder’s proposed goods will be identified in the notice of intent to award letter allowing other bidders the opportunity to scrutinize specification compliance. If no other bidder is able to successfully challenge specification compliance, we can then proceed with the award with confidence (at least with regard to specification compliance). If otherwise and it was discovered after the award has been made that the successful vendor did not conform to bid specifications, then, the integrity of the bid process is compromised as pricing information will have been disclosed. By utilizing this process, bidders are less likely to try to dupe the state with regard to specification compliance. Bidders have also historically supported this methodology as it keeps everyone honest. Accordingly, we may want our recommendations to allow for this practice.*   (For full discussion of this issue, please see memo: DRAFT MEMO 2452-S2-SL 4 RELEASE OF BID DOCUMENTS V2.DOC)  2SHB2452 Section 4(1) and 4(2) address disclosure of bid document. Section (2) exempts “Bid submissions and bid evaluations…until the agency announces the apparent successful bidder.”[[[1]](#endnote-1)]  **PRA Exemptions**   * RCW 42.56 *et seq*, the Public Records act, provides numerous exemptions from disclosure (e.g., 42.56.230 through 42.56.480) . The Public Records act also acknowledges that “other” statutes may provide additional exemptions RCW 42.56.070 (1) [[2]](#endnote-2) * Section 4(2) is an element of such an “other” statute which exempts or prohibits disclosure of specific information or records. In this case, it exempts disclosure until a specific procurement event.   **Concerns**  Procurement team members have described scenarios in which the release of bid submissions and bid evaluations (“bid documents”) at the time the apparent successful bidder is announced could compromise or adversely affect the procurement. [[[3]](#endnote-3)]  **Interpreting Section 4(2)**  Does 4(2) require the agency to release of bid submissions and bid evaluations or does it permit it?   * In a statute, the word “shall” or “must” customarily denotes mandated actions. However Section 4(2) does not include either word. * Because other sections of 2SHB2452 use “shall” we may assume that if the legislature intended to mandate the release of bid submissions and bid evaluations, they would have used “shall” or “must” here. * Reading 4(2) to include” shall” or “must” would require adding a term which contradicts principles of statutory construction. * However one may also read 4(2) to remove one exemption without affecting other applicable exemptions. In other words, bid document s are exempt “..until the agency announces the apparent successful bidder…” and this exemption no longer applies once the “…agency announces the apparent successful bidder.” * Thus while bid documents may be released other applicable exemptions still apply.   Why is this a reasonable interpretation?   * 2SHB2452 does not modify the Public Records act itself or any other PRA or other statutory exemptions * 2SHB2452 includes an enumerated list of other statutes it modifies but RCW 42.56 is not one of them. (Page 1, line 1 to 13) * If 2SHB2452 is read to mandate bid document disclosure, it would explicitly trump other potentially applicable exemptions such as confidentiality. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)  *RCW* [*42.56*](http://apps.leg.wa.gov/rcw/default.aspx?cite=42.56&full=true)*, WAC* [*200-300-115*](http://apps.leg.wa.gov/wac/default.aspx?cite=200-300&full=true#200-300-115) | | Assumptions / Pre-requisites / Dependencies:  It is assumed that if vendors do know what was bid by others the rebid would be at the lowest cost proposed, the scope of work may mimic the former apparent successful vendor’s bid or proposal. | | Discussion of anticipated benefits:  Transparency. Protests and legal actions may be limited if the vendors believe they were treated fairly and equally. | | **Discussion of anticipated concerns:**   * Bids could be higher Agency could try to protect against that event by using a maximum rate or minimum level of service in the solicitation document. * The majority of state agencies make evaluation information available in some fashion during the debriefing process but do not make any of the actual proposals available until after execution of a contract with the apparently successful bidder (ASB). While most agree that the release of evaluation information (scores, evaluator comments, etc.) should be done after the announcement of the ASB but preceding any debriefings, it is universally acknowledged that the unconditional release of bidder's proposals prior to completing final negotiations with the ASB places the State at a distinct disadvantage. An important tool for the State in contract negotiations is the option to go to the next highest bidder if it cannot successfully finalize a contract with the ASB. The premature release of proposals (all - not just the ASB's) severely impairs (if not totally negates) this option and would excessively interfere with this essential function.   Additionally, as many bidders mark elements of their proposals "proprietary" or "confidential", in accordance with 42.56 RCW (Public Disclosure), the State provides bidders an opportunity to secure an injunction preventing us from releasing those elements. Traditionally, this notice would be made at the time the State received a request for copies of the proposal. (If the contract was not yet executed, the requestor is also notified that the documents would not be available until after execution of the contract.) If this notification/injunction step becomes necessary to complete prior to debriefings, at a minimum it would add two weeks to the procurement process. As a result, we have added complexity to a process that we are attempting to streamline.  **Recommendation**  Each agency must review and update their public disclosure and/or procurement policies to ensure that they specifically address the release of bid documents.  When conducting solicitations using DES, OCIO, etc. preapproved vendors, the release of bid documents will be governed by the their published policies. "Open-market" solicitations will be conducted in accordance with the issuers policies which must be clearly reflected in the solicitation document | | List of alternate approaches:  Release of evaluation documents but not of solicitation documents as protests must be based on bias, scoring errors, etc.  Assuming an agency may release bid documents but is not required to do so, what limits apply to the timing of the release?  Agencies have relied on two provisions: statutory, e.g., 43.19.1911(8) and from time to time various PRA exemptions which are not necessarily on point [ ]  However the facts and circumstance of each procurement vary; for example if there is only one bidder, an agency may in its judgment, believe its negotiation position with respect to price maybe weakened by early disclosure of that fact to that bidder.  Because procurements differ, a single disclosure requirement could work against the best interest of the state. I recommend leaving bid document release timing up to each agency provided disclosure occurs:   * as soon as possible consistent with the goals and philosophy of procurement reform ("…to promote open competition and transparency for all contracts for goods and services entered into by state agencies…") * no later than the letting of the contract.   NEW SECTION. Sec. 4. RELEASE OF BID DOCUMENTS. (1) Records related to state procurements are public records subject to disclosure to the extent provided in chapter 42.56 RCW except as provided in subsection (2) of this section. (2) Bid submissions and bid evaluations are exempt from disclosure until the agency announces the apparent successful bidder.  (1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (6) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records.  *“…*Sometimes OSP will include language in the solicitation indicating that the apparent successful bidder’s proposed goods will be identified in the notice of intent to award letter allowing other bidders the opportunity to scrutinize specificationcompliance. If no other bidder is able to successfully challenge specification compliance, we can then proceed with the award with confidence (at least with regard to specification compliance). If otherwise and it was discovered after the award has been made that the successful vendor did not conform to bid specifications, then, the integrity of the bid process is compromised as pricing information will have been disclosed. By utilizing this process, bidders are less likely to try to dupe the state with regard to specification compliance. Bidders have also historically supported this methodology as it keeps everyone honest. Accordingly, we may want our recommendations to allow for this practice. | |

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| Award Work Group  Advisory Committee Question Response |
| Release of Bid Documents –Section 4  Bid submissions and evaluations are exempt from disclosure until the agency “announces the apparent successful bidder.” What does that mean? What guidance can we provide to comply?  Best and Final Offer (BAFO) – Section 18 If someone asked you when you use the best and final offer process and how you use that process, what guidance would you provide?  Response: When to use BAFO?  *The BAFO should be used whenever the state believes it may be in its best interest to allow the top ranked Bidders the opportunity to refine and improve their offer.*  Response: Guidance for using BAFO?  *All solicitations should include standard language allowing the state the option to pursue a BAFO. Besides responding to the solicitation, Bidders would be given the opportunity to also include for consideration alternatives for satisfying the stated need which may result in improved economies or efficiencies. [For example: besides proposing a price to meet the state delivery due date, a bidder might indicate that improved savings could be achieved if the delivery date extended by one week]. The state at its sole discretion could then allow the top ranked Bidder(s) (the number of which to be determined by the procuring agency) the opportunity to refine and improve their offer. Prior to doing so and using the proposed acceptable alternatives submitted by all bidders, the state would notify the BAFO pool of what areas in satisfying the need the Bidder may wish to refine and improve their offer. For example: the state may identify flexibility in delivery dates in exchange for improved pricing. Once the BAFO due date and time has elapsed, the BAFO Bidder pool responses (revised or not) would then be reevaluated and the response offering the best overall value to the state (consistent with the evaluation criteria outlined in the solicitation) would then be awarded the contract.*  Best Value Criteria – Section 18 If someone asked you when you use the best value criteria instead of low bid, and how to determine what factors to look at or ask about for the best value criteria, what advice/guidance would you provide?  Response: When to use Best Value?  *In general, we can’t think of any instance when best value wouldn’t apply. Accordingly and by default, it is recommended that the state always pursue best value purchasing. However, for some purchases, the resources needed to develop, evaluate and award a best value solicitation may not justify the time and expense (i.e. low dollar purchases or informal RFQs, emergency purchases, etc.). Even so, by foregoing such expenses it could be argued that even these exceptions could be considered a best value purchase by the state.*  Response: What factors to look for in Best Value?  *Besides conforming to the responsibility found in section 18(2) of 2SHB 2452, section 18(3) already details the high level factors that must be met to be considered a best value contract which include but are not limited to:*   1. *Whether the bid satisfies the needs of the state as specified in the solicitation documents;* 2. *Whether the bid encourages diverse contractor participation; (in other words, was the bid effectively wired for a particular vendor or was it written to attract the maximum competition?)* 3. *Whether the bid provides competitive pricing, economies, and efficiencies; (was the bid developed to attract aggressive pricing or innovative solutions that may result in improved economies or efficiencies?)* 4. *Whether the bid considers human health and environmental impacts;(although it may not be reflected in the initial purchase price, there can be a long term added cost to the state when making a purchase that ends up being harmful to human health and the environment)* 5. *Whether the bid appropriately weighs cost and non-cost considerations; (this speaks to giving the appropriate level of credit [points] to the value added attributes of a bidders offer. Since every procurement is different, only the stakeholders will be able to identify what non-cost considerations should be factor into the evaluation criteria)* 6. *Life-cycle cost. (Not just initial purchase price but the total cost throughout the life of the product)*   *If the solicitation document addresses and properly considers and evaluates the above, the best value should result.*  Response: What guidance should be provided?  *Neither taxpayers nor leadership expect the state purchase the cheapest thing that meets minimum requirements. Instead, purchasing should not only satisfy the need but also in a manner that achieves the maximum value for the money spent. Doing so means an appropriate amount of credit be given to value added attributes without paying too much or exceeding budget limitations. All of this can be accomplished through training and already available tools.*  Responsible Bidder – Section 18 If someone asked you what factors to consider when making a determination if a bidder is a responsible bidder, what guidance would you provide?  *Response: What factors to consider in determining a responsible bidder?*  *Section 18(2) of 2SHB 2452 already outlines what must be considered in determining if a Bidder is to be considered a responsible Bidder. That said and in general, the solicitation and the evaluation process should request information from the Bidder that will enable the state to determine if the successful Bidder(s) is capable of fulfilling contractual obligations.*  Complaint Process – Section 19 What should be included in a complaint process? What should a potential bidder be allowed to “complaint” about? When should it occur? Who should be involved in the review and determination if a complaint is made?  *Response: What should be included in the complaint process?*  *As a best practice, all solicitations should include language prompting Bidders to raise any solicitation questions, issues or concerns during a question and answer period. However, if not satisfy with the response, potential Bidders should have the opportunity to submit a written formal compliant (that meets the complaint criteria--see below) prior to the bid closing (to include any supporting documentation). The Procurement Coordinator (in coordination with legal counsel and sourcing team members or subject matter experts as warranted) would be required to issue a written final response prior to bid closing. Afterwards, it would be at the Agency’s sole discretion whether to consider complaints.*  *Response: What should a potential bidder be allowed to complain about?*  *As reflected in the team’s* [*completed form*](http://sharepoint.dis.wa.gov/desnet/procreform/award/Complaint_and_Protest_Process/Procurement%20Reform%20Work%20Group%20Form--Award-(Complaint%20and%20Protest%20Process).docx)*, formal complaints should be limited to:*   * *The solicitation unnecessarily restricts competition.* * *Solicitation evaluation and scoring process is unfair or flawed.*   Response: Who should be involved in the review and determination?  *The Procurement Coordinator (in coordination with legal counsel and sourcing team members or subject matter experts as warranted)*  Debriefing Conference – Forget about the current process. If you were a bidder who did not get awarded the contract, what would you want to learn in a debriefing conference?  *Response: What unsuccessful Bidders want to learn in a debriefing conference?*   * *Where were we deficient and where did we excel?* * *What could we do in the future to improve our chances for success?* * *What were the scores and content of other bidders?*   Protest Process – Section 19 What should be included in a protest process? What should a potential bidder be allowed to “protest” and when should it occur? Who should be involved in the review and determination if a complaint is made?  *Response: What should be included in the protest process?*   * *A form that guides Protestor in succinctly articulating the basis for protest and provides the Procuring Agency all the information needed to appropriately consider and respond to the protest.* * *A reasonable timeline for submitting a timely protest* * *A list of valid criteria for submitting a protest* * *A process explaining how invalid protests will be handled* * *Access to all bid responses in advance of debriefing conference* * *An opportunity for Bidders to ask the Procurement Coordinator questions about the evaluation and award process.* * *An opportunity for the unsuccessful Bidder to appeal the Procurement Coordinator’s protest decision.* * *An fair and objective appeal response from someone other than the Procurement Coordinator.*   Response: What should a Bidder be allowed to protest about?  *As reflected in the team’s* [*completed form*](http://sharepoint.dis.wa.gov/desnet/procreform/award/Complaint_and_Protest_Process/Procurement%20Reform%20Work%20Group%20Form--Award-(Complaint%20and%20Protest%20Process).docx)*, formal complaints should be limited to:*   * *A matter of bias, discrimination, or conflict of interest on the part of an evaluator;* * *Errors in computing the scores; or* * *Non-compliance with procedures described in the procurement document or agency policy.*   Response: When should the protest period occur?  *Section 19(2) of 2SHB 2452 states that “The protest process must included a protest period after the apparent successful bidder is announced but before the contract is signed.*  Response: Who should be involved in the review and determination?  *Unless agency management designates otherwise, the Procurement Coordinator (in consultation with legal counsel and sourcing team members as warranted) should respond to protests. Management from the Procuring Agency should designate the appropriate person responsible for the final response to Protest Appeals (in consultation with legal counsel and subject matter experts as warranted)*  Contract Execution Prior to Completing Protest Process – Section 19(3) What would be considered exigent circumstances or what factors should be considered to determine exigent circumstance , in order to approve signing a contract prior to the completion of the protest process?  Response: to question above?  *When Procuring Agency is able to make a written and compelling argument (to include any relevant supporting documentation) that it is in the best interest of the state to do so.* |

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| Debarment Work Group  Authority To Debar Recommendation |
| |  | | --- | | **2SHB2452 Reference for Recommendation: NEW SECTION. Sec. 22. AUTHORITY TO DEBAR**  **(1) Establish criteria for Debarment (see other recommendation form);**  **(2) Suggest a Notice Process (see below);**  **(3) Process for Issuing a Decision (see below);**  **(4) Due Process and Rules Review (see below).** | | Primary Recommendation **Preliminary consideration of allegations in support of referral to debar.**Debarment Referral:May be initiated by anyone, including the Director.Must be in writing. (Recommend DES design and provide a form to be completed by presenting party and available on DES website, which includes instructions on how and where to submit the form.)Must be submitted to DES at \_\_\_\_\_\_\_[insert appropriate address and/or website for referral submissions].Must identify presenting party and include current contact information of presenting party. Presenting party needs to be available to provide additional supporting information, if requested by DES.Must state specific statutory criteria supporting referral for debarment.Must clearly identify the party subject to possible debarment.The Director may waive any of the above elements in considering whether to accept or reject a debarment referral.Privacy Consideration:Initial reports are not subject to public disclosure prior to a final determination or conclusion of the debarment proceedings, whichever is later. (May need to be the subject of an amendment to the PRA citing a specific exemption. There was a consensus concern of the privacy rights of the complained against contractor while an investigation is under consideration).**Responsibilities of Director upon Receipt of Debarment Referral**Director must:Make a preliminary finding on whether to accept or reject the referral. The Director will assume that the relevant factual allegations as presented are true and if the allegations are sufficient on their face to support debarment. If not the referral will be rejected.Notify the presenting party (unless initiated by the Director) if the referral is rejected. The notice:Must be in writing.Must specify why the referral has been rejected.Refer the matter for debarment proceedings, if the allegations are sufficient to support debarment.**Initiation of Debarment Proceedings**Notice must be given to the contractor or prospective contractor of the intent to debar. (For purposes of this policy the term “contractor” includes “prospective contractors as well as current state contractors.)Notice must be in writing and sent by certified mail, return receipt requested, or by personal service.The written notice must:Be given to the contractor who is subject to debarment.Inform the contractor that DES is considering debarment.State the applicable cause(s) for debarment and the known facts supporting each cause.Identify the law and rules governing debarment.Inform the contractor that it may participate in the investigation by submitting in writing any information, records, or argument in opposition to debarment or mitigating factors within 30 calendar days of this notice.Explain the effect of debarment.DES will initiate and complete a reasonable review or investigation of the referral and provides its findings to the Department of Enterprise Services Director (or designee).The Director (or designee) must consider all information presented including all written information provided by the contractor and weigh all aggravating or mitigating factors and reach a conclusion to debar (or not).The Director must notify the contractor of the decision in writing.If the decision is to debar, the Director shall send written notice of debarment (sent by certified mail, return receipt requested) which will:Notify the contractor that DES intends to debar the contractor effective on a specified date (which has to be at least 30 calendar days from the notice date).State the reasons for proposing debarment, including the specific cause(s) for debarment and the facts supporting each cause.Identify the law and rules which specifically support the debarment decision.State the period of debarment.Explain the effect of debarment.Notify the contractor that debarment will not be effective on that date if, within 30 calendar days, the contractor objects to debarment in writing by requesting an administrative review to contest the debarment.Notify the contractor to whom and where to address the objection.If a an objection is not received from the contractor within 30 calendar days of notice to debar, the contractor will be considered debarred and the Director or designee will add the debarred contractor with the specific dates of debarment to the state debarment list maintained on the DES website.**Administrative Review Procedure**If the contractor requests an administrative review, the Director, or his/her delegate(s), must consider the facts, all information presented in the initial decision making process, and any additional information provided by the contractor, and confirm or overturn the previous decision.The effective date of the debarment is stayed until the final decision of the Director.The Director shall notify the contractor of the agency’s final decision in writing.The debarment proceeding is considered final after the administrative review process is complete. The debarment will be effective upon issuance of the final decision or the original effective date, whichever is later unless stayed by a court of competent jurisdiction.Director or designee will add the debarred contractor with the specific dates of debarment to the state debarment list maintained on the DES website. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)  Chapter 224, Laws of 2012, Sec. 22(3)  ABA Model Procurement Code  Federal Acquisition Regulation (FAR) 48 CFR Chapter 1 Subpart 9.406-2  Massachusetts State Law  Tennessee State Law  Girrard v. Klopsenstein, 930 F. 2nd 738 (9th Cir. 1991), cert denied 112 U.S. 173 (1991) | | Assumptions / Pre-requisites / Dependencies:   1. Less process is best as long as it is fair. 2. Contractor should have involvement in the debarment process. 3. Director may delegate these duties. 4. Expectation that Director’s final decision would be reviewed by separate internal DES panel (of at least three people) if contractor contests the decision, instead of just review by Director again. 5. DES will create and maintaining a current list on its website of debarred contractors and the dates that the debarment period is in effect. (If possible, the Workgroup also recommends creating a listserv by which state contracting professionals can be automatically notified by email when a contractor has been added to the debarment list). | | Discussion of anticipated benefits:  The Workgroup’s goal is to create a fair and straight forward process which gives the contractor the opportunity to be heard and also provides for clear instruction for DES Director in deciding and issuing a final decision. | | Discussion of anticipated concerns and areas of ambiguity:  ISSUES FOR ADVISORY GROUP TO REVIEW AND  PROVIDE FEEDBACK TO THIS WORK GROUP Does *“administrative review”* in section 22 (3)(b) mean adjudicative proceeding/administrative hearing under the state Administrative Procedure Act?Debarment does not apply to EXISTING contracts on January 1, 2013. Because the definition of *“debar’* under Sec. 2(9) prohibits a contractor from:submitting a bid, (2) having a bid considered and (3) entering into a state contract (ALL prospective in application).A contactor could be debarred and prevented from ENTERING new contracts, but allowed to continue business with the state under an existing contract. We realize it would take Legislative action to cover existing contracts. Is there any plan to seek legislation to address possible TERMINATION of contracts with contractors who are debarred AFTER they enter into a contract with the state in the 2013 Legislature?Should the director have authority to conduct an initial investigation before they are required to ‘accept’ the referral and give the contractor notice? (e.g. claim of a criminal conviction which can easily be verified?)**"Debar"** means to **prohibit** a contractor, individual, or other entity **from submitting a bid, having a bid considered,** or entering into a state contract during a specified period of time as set forth in a debarment order. The process under development will not “prohibit” a debarred party from submitting a bid, and because of limited available resources, the “debarred parties list” will not be checked until right before award, possibly allowing debarred parties “submitting a bid and having a bid considered”.  The current process under development is a good, practical first step toward implementation based on resources currently available. Suspension: While other jurisdictions provide a suspension process pending a debarment investigation and decision, our legislation provides no authority for suspension. Is this off the table for our consideration?Debarment Scope:  Do we need to make recommendations regarding the potential scope of debarment? For example, that a debarred individual, entity, or contractor cannot serve as a subcontractor to other contractors. Or that debarment can be restricted to a particular subsidiary or division of a contractor. Or when an individual’s conviction for embezzlement (for example) should subject that individual to debarment and should also subject the individual’s corporation or other corporate officers to debarment. Or that a particular debarment can be limited to a certain agency(ies) or type of transaction.Exceptions: Should there be a process for a state agency to request DES to permit a particular debarred individual, entity, or contractor to compete and obtain a contract for a particular transaction?Aggravating/Mitigating Factors: In determining whether to debar and the period for debarment, DES is to consider “aggravating/mitigating factors.” Do you want us to suggest what such factors ought to be?Debarment Reprieves: Should we recommend that a debarred individual, entity, or contractor may request that DES reduce a current debarment period for certain good reasons, for example, change in ownership or other factors?**“Reactive” process versus “Proactive” process**: The process in development requires a party, whether state agency or private individual, to “trigger” the debarment process by submitting a Debarment Referral. Resulting final debarments are anticipated to be made available to the public and agencies to ensure debarred parties are not offered a new contract for the specified debarment time period. Due to time and resource constraints, most agencies will check this list right before awarding the contract as they won’t have time to check every single bidder against the list. Further, input from purchasing departments might be useful to find out if even this measure is practical. | | List of alternate approaches:  An alternative approach to the “appeal process” outlined in the “Primary Recommendation” Section above, would be to instead allow for the initial issuance of the Director’s decision to be final agency action and then provide for right of contractor to request a hearing in front of an Administrative Law Judge (ALJ) for review of the Director’s decision. Under the primary recommendation, the contractor still has a right for judicial review by appealing the final agency decision to Superior Court. This right is derived from the Administrative Procedures Act. However, appealing to Superior Court is more expensive and usually takes longer than appealing to an ALJ.  **Future enhancements to allow better compliance with the intent of Section 22**:  The following suggestions are based on investment in systems infrastructure to support modifications to the process being developed:  **Centralized registration system** (WEBS?) that includes *proactive* scanning of existing and new contractors against appropriate data bases including state debarred parties lists, checks for criminal convictions or other agencies lists and the federal “Excluded Parties List System”. Any matches could be referred to DES via the Debarment Referral process (above). If processed and actually debarred, the contractor would not be allowed into the WEBS system, therefore *preventing* them from submitting a bid or having a bid considered – not relying on all contract specialists resources in each agency to be checking, nor wasting time evaluating bids from (potentially) debarred contractors.  Debarred vendors could be removed from the WEBS registration and bid notification system or otherwise have their registration record held or restricted from certain commodity codes (if applicable) so that notifications of bid opportunities are not sent to that vendor while debarred, proactively “prohibiting” their participation in the solicitation process.  **Centralized Contracts Data Base**, which could combine ECMS, PSCD, CSCD and other appropriate data bases or sources of information, could be used to flag existing contracts with debarred contractors, and provide notifications to Contract Managers and Contract Specialists. While evaluating *current* contracts of debarred parties appears to be out of scope as this Section 22 is written, it may be something to consider in the future. Some large contracts for complex, long term projects have been designed to allow for extensions for up to 4, 6, 8 or more years. | |

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| Debarment Work Group  Debarment Notice Recommendation |
| |  | | --- | | **2SHB2452 Reference for Recommendation: NEW SECTION. Sec. 22. AUTHORITY TO DEBAR**  **(1) Establish criteria for Debarment (see other recommendation form);**  **(2) Suggest a Notice Process (see below);**  **(3) Process for Issuing a Decision (see below);**  **(4) Due Process and Rules Review (see below).** | | Notice Process for Debarment   1. Preliminary consideration of allegations in support of request to debar.    1. Requirements for Debarment Referral       1. Can be presented by anyone       2. Must be in writing       3. Presenting party must be identified (signed/under oath?)       4. Presenting party must be available to provide additional supporting information       5. Must state specific statutory criteria supporting request for debarment       6. Can be initiated by the Director       7. Must clearly identify the party subject to possible debarment       8. Initial reports are not subject to public disclosure       9. Submitting party may be asked to submit additional information    2. Responsibility of Director       1. Receive referral       2. Will make a preliminary finding on whether to accept/reject the referral       3. Presenting party shall be notified of director’s preliminary finding/determination.          1. Shall be in writing          2. Shall specify why the referral has been rejected or accepted.       4. Director will assume that the factual allegations as presented are true and will determine whether they are sufficient to support debarment.       5. If the allegations are sufficient to support debarment, the matter shall be referred for debarment; if not the matter shall be closed. 2. Initiation of Debarment Proceedings    1. Notice to Contractor of intent to debar       1. Notice must be by certified mail, return receipt requested, or by personal service.       2. The written notice must:          1. Notice must be given to the individual, contractor, or other entity who is subject to debarment.          2. Inform the contractor that DES is considering debarment.          3. State the applicable cause(s) for debarment and the known facts supporting each cause.             1. Identify the law and rules governing debarment          4. Inform the contractor that it may participate in the investigation by submitting any information, records, or argument in opposition to debarment within 30 calendar days of this notice.          5. Explain the effect of debarment. 3. Rights of Contractor    1. Present information, documentary evidence and argument in opposition to debarment.   Assume these activities occur:  4. DES completes the investigation and provides its results to the Department of Enterprise Services Director (or designee).  5. The Director (or designee) has considered all information presented and weighed all aggravating/mitigating factors and reached a conclusion to debar (or not).    Second Notice to the Contractor: Written Decision to Debar  Chapter 224, Laws of 2012, Sec. 22(3)  Assuming the decision is to debar, DES issues to the contractor notice of proposed debarment. The written notice of debarment (sent by certified mail, return receipt requested) must do these things:  a. Notify the contractor that DES intends to debar the contractor effective on a specified date (which has to be at least 30 calendar days from the notice date).  b. State the period of debarment.  c. Notify the contractor that debarment will not be effective on that date if, within 30 calendar days, the contractor objects to debarment in writing by requesting a hearing to contest the debarment.  d. Notify the contractor to whom and where to address the objection.  e. State the reasons for proposing debarment, including the specific cause(s) for debarment and the facts supporting each cause.  f. Identify the law and rules governing debarment.  g. Explain the effect of debarment. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)  Chapter 224, Laws of 2012, Sec. 22(3)  ABA Model Procurement Code  Federal Acquisition Regulation (FAR) 48 CFR Chapter 1 Subpart 9.406-2  Massachusetts State Law  Tennessee State Law | | Assumptions / Pre-requisites / Dependencies:  Assume these activities have already occurred:  1. Someone has submitted information to the Department of Enterprise Services alleging cause for debarment.  2. DES makes a preliminary determination that there may be good cause to debar and orders a full investigation.  3. The Department of Enterprise Services begins an investigation.  4. Less process is best as long as it is fair.  5. Contractor should have involvement in the debarment process.  6. Director may delegate these duties | | Discussion of anticipated benefits: | | Discussion of anticipated concerns: | | List of alternate approaches: | |

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| Transparency Work Group  Transparency Recommendation |
| 2SHB2452 Reference for Recommendation NEW SECTION, Sec 23. TRANSPARENCY: (1) Agencies must annually submit to the department a list of all contracts that the agency has entered into or renewed. "Contracts," for the purposes of this section, does not include purchase orders. The department must maintain a publicly available list of all contracts entered into by agencies during each fiscal year, except that contracts for the employment of expert witnesses for the purposes of litigation shall not be made publicly available to the extent that information is exempt from disclosure under state law. Except as otherwise exempt, the data must identify the (1) contracting agency, (2) the contractor, (3) the purpose of the contract, (4) effective dates and periods of performance, (5) the cost of the contract and (6) funding source, (7) any substantive modifications to the contract, and (8) whether the contract was competitively procured or awarded on a sole source basis. *Parenthesis added for ease of reading.*  (2) The department may conduct audits of its master contracts and convenience contracts to ensure that the contractor is in compliance with the contract terms and conditions, including but not limited to providing only the goods and services specified in the contract at the contract price. |
| Primary Recommendation:  Definitions and justifications: The following definitions and justifications were applied by the workgroup in order to identify the primary recommendation.  Required data elements:   * Contracting agency – The appropriate “agency title” and “agency number” as listed in [OFM SAAM 75.20.20](http://www.ofm.wa.gov/policy/75.20.htm) for the agency that administers the contract. * Contractor – The name, as well as “doing business as” of the individual, company, corporation, firm, or combination thereof with whom the purchaser develops a contract for the procurement of goods and services. This will meet the current requirement. Discussions about added value and development may include OFM vendor number, address, state of incorporation, Washington State UBI number, OMWBE status, Washington small business status, Washington Veteran-owned business status. * Purpose of the contract – Option 1: Submit Free Form information stated on the contract in the purpose section. For example –WDFW is one of 8 state and federal organizations who have partnered to complete a Reband Trout Rangewide Status Review. The partner agencies will provide cash and in-kind in support of this project. Option 2: Establish major categories for different types of contracts (Higher Ed, Transportation, Natural Resources, Social and Health, Recreation, etc. Include subcategories of each major category. Subcategories would need to be further defined. * Effective dates – The date as of which a contract or other instrument enters into force OR the date on which a one-time buy is made. * Periods of performance – The date(s) during which contracted work is performed OR the date on which a one-time is made. * Cost of the contract – Dollar amount may be entered based on firm price, estimated value, or not-to-exceed price. Current systems used by agencies/institutions collect a variety of costs. Discussions about added value and development may include distinguishing costs in categories such as market value of the products at the time of purchase, no maximum amount, budgeted amount (do not exceed amount), estimated amount, per unit cost, and amount agreed to by agency and vendor upon signing. * Funding source – The underlying source for the funds used to make purchases against a contract, which may include   + State Funds   + Federal Funds   + Other Fund Sources (such as foundations, private corporations, or self-sustaining funds)   + Various funding sources (some contracts such as term supply contracts and master contracts might be used by multiple funding sources) * Substantive modifications to the contract – Changes to any of the six common data elements above. * Competitively procured or Sole source – Indication of one procurement method or the other.   Reporting period: Annual reports will be submitted by August 31 for the previous fiscal year, July 1st through June 30th.  Annual report: Agencies /institutions will report “committed” contracts beginning January 1, 2013. Existing contract tracking resources will need to be modified to collect the required data elements, so begin date will allow agencies/institutions to implement and test system changes. Contracts that are in place prior to January 1, 2013 will not be reported because the required data elements have not been collected, and it will require extensive workload and system developments to bring historical records into compliance with these new requirements. |
| Primary Recommendation: Option 1 – Develop a Web interface to which eight common data elements (defined above) generated by various existing contracts tracking resources may be submitted to fiscal.wa.gov.   * Information Gathering (input): A Web interface will minimize duplication of effort and increased costs by using existing contract tracking resources, and meet the data requirements identified within HB2452. * Ad Hoc Query (output): Web-based reporting, which will include identification of the submitting state agencies and educational institutions and the eight common data elements, on the existing fiscal.wa.gov will conform with the current site standards. Search and sort functionality will be explored and may be included by the January 1, 2013 deadline if technically feasible. * Public Information (output): A Web interface will standardize, consolidate, and centralize data that will be available to the public through the fiscal.wa.gov Website. |
| References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.):  Information that was collected and considered by the workgroup members, and found to be in support of the primary recommendation includes the following:   * The workgroup reviewed the contract reporting Websites for Colorado, Texas and Virginia that report information that is similar to the Legislative requirements in Washington. Colorado excludes Department of Transportation and higher education data due to data incompatibility issues. Texas was rated as number one in the top four Leading states in the nation for providing historical expenditures dating back to 2002, according to the CoPIRG Foundation (Colorado Public Interest Research Group) article “Following the Money 2012” * Content and functionality of fiscal.wa.gov   + Publically viewable portal that allows the public to view reports of financial data that is uploaded to the Personal Services Contract Database (PCSD) (<http://www.ofm.wa.gov/contracts/reportgs/default.asp>).   + Reports are segmented down by year, i.e., 2012, 2011, 2010   + Reports are displayed by month/year   + Reports are linked by “Filed” (assigned a number by PCSD) and “Reported” (not subjected to filing with DES) <http://www.ofm.wa.gov/contracts/reports/default.asp#2012>. Filed and Reported are Summarized by Agency * Current contract tracking resources   + Enterprise Contracts Management System  1. Existing Web-based software database designed to manage and track contract information and documents, and is available for use by any agency or institution currently using the Personal Services Contract Database (PSCD) to report personal service contracts, PSCD was used as the model. 2. Currently used by 21 agencies. 3. Interfaces with the Statewide Vendor registration table creating consistency among vendor names and TIN numbers. 4. Enterprise Reporting Ad Hoc is already interfaced with ECMS so there would not be a learning curve as the Department (noted in the Bill) could run one report for all agencies using ECMS and post it to the website currently being used, Fiscal.wa.gov, to report Personal Services Contracts. 5. Agencies that use ECMS submit quarterly reports from ECMS to Enterprise Reporting Ad Hoc Queries to the Governor’s office for performance-based contracts (<http://sharepoint.dis.wa.gov/gmap/PBCReproting/Pages/default.aspx>).    * Additional research will need to be conducted to identify current contract tracking resources and practices. Limited research revealed the following: 6. Higher Education institutions’ data systems are vastly different from one another, and from the state agencies’. 7. Other than the 21 state agencies using ECMS, we would need to research other agencies to find out what their current practices and resources are.  * It is the workgroup’s understanding that the intent of the Legislation is to track and make available long-term contractual obligations/commitments.  1. Some agencies do not currently track one-off purchases in their contract tracking systems.   Information that was collected and considered by the workgroup members, and found to not support the primary recommendation includes the following:   * Contract reporting Websites for California, Idaho, and Wyoming provide lists of state contracts that are available to state agencies to use, and bidding opportunities in California’s BidSync. They don’t report agency contracting and spend behaviors. |
| Assumptions / Pre-requisites / Dependencies:  Primary Recommendation: Option 1 – Develop a Web interface to which eight common data elements (defined above) generated by various existing contracts tracking resources may be submitted to fiscal.wa.gov.   * Information Gathering (input): * DES Business Process & Design and Enterprise Technology Services have the resources and bandwidth to develop a Web interface to which data may be uploaded by state agencies and educational institutions. * Existing contract tracking resources can generate a common report format that will upload through the Web interface. * Agencies/institutions may program existing systems/applications to automatically submit reports in compliance with the agreed upon reporting timeline. * Agencies/institutions using existing contract tracking applications that can generate the common reporting format will be able to submit reports to DES through the Web interface. * Agencies/institutions that do not use a contract tracking application may document the common data elements in an Excel spreadsheet or work document and upload to the DES Web interface. * A statewide policy will be issued that requires state agencies and educational institutions to submit purchasing activity reports in the common format, to the Web interface, according to a common reporting timeline. * Adequate research will be conducted among stakeholders to make sure that the disparate systems, applications, and resources will be able to generate the common reporting format. * Adequate communication and training will be provided to make sure all state/institution personal who will be responsible for submitting the reports know how, where, and when to submit. * Posting to fiscal.wa.gov, which is owned by OFM, will require agreement and coordination to add this content to the existing Web portal. * Ad Hoc QUERY (output): * DES Business Process & Design has the resources and bandwidth to develop a Web-based reporting portal from which viewers may search and sort submitting agency/institutions and the eight data elements. An acceptable interim solution that will meet the Legislative requirement is a Web-based listing, by agency/institution, of the eight data elements, with the intent to add the search and sort functionality. * All agencies and institutions that are required by Legislation to report will be able to produce or create a common output format that may be uploaded to the Web interface. * View and function may be limited to existing view and functionality of fiscal.wa.gov. * Public Information (output):   + To meet the Transparency requirements of the Legislation, contracts will include the following:   1. Goods & services   2. Technology   3. Personal services   4. Client services   + For the purposes of this effort, contracts will not include the following:  1. Direct buy purchases 2. Non-fiscal agreements 3. Public Works performed under RCW 39.04 4. Architects & Engineers performed under RCW 39.80 5. Inter-local agreements performed under RCW 30.34 6. Sub-grants (sub-recipient pass through funds from Federal and other non-profit sponsors) 7. Collaborative research agreements (see Section 14 of SSHB 2452) 8. Grants 9. Loans 10. Purchase orders   Option 2 – Develop a Web interface to which eight common data elements (defined above) generated by various existing contracts tracking resources may be submitted to des.wa.gov.   * Information Gathering (input): * Same as identified for Option 1 Information Gathering (input), with the exception of the last bullet regarding posting to fiscal.wa.gov. * Ad Hoc Query (output): * Same as identified for Option 1 Ad Hoc Query (output), with the exception of the last bullet regarding view and functionality of fiscal.wa.gov. * Public Information (output): * Same as identified for Option 1 Public Information (output).   Option 3 – Establish common data elements that agencies/institutions will need to submit once a year to Enterprise Services who will be responsible for determining how information will be provided in response to public requests.   * Information Gathering (input): * Agencies/institutions will use existing contract management systems, applications, or resources to document the eight common data elements. * A statewide policy will be issued that requires state agencies and educational institutions to collect and make available to the public purchasing activity reports according to a common reporting timeline. * Once a year, agencies / institutions will be required to submit a report based on a set schedule. * Ad Hoc Query (output): * Agencies/institutions may develop additional functionality – beyond “view” – and will be responsible for developing, training, and maintaining this functionality. * Public Information (output): * Same as identified for Option 1 Public Information (output).   Option 4 – Purchase an enterprise contract management system that is based on statewide contract management business requirements identified by a representative stakeholder group.   * Information Gathering (input): * Business requirements will be identified; off-the-shelf systems will be identified and evaluated against the business requirements; system is procured and installed/implemented; appropriate technical, customer service, and agency/institution staff are trained so that the new system and reporting functionality are up and running January 1, 2013. * Funds will be allocated for the procurement and installation/implementation of an enterprise application. * Agencies/institutions may program existing systems/applications to automatically submit reports in compliance with the agreed upon reporting timeline. * Development, training, and support staff time will be allocated to ensure timely and accurate implementation of the system. * A statewide policy will be issued that requires state agencies and educational institutions to submit purchasing activity reports in the common format, to the Web interface, according to a common reporting timeline. * Ad Hoc Query (output): * Selected system will interface with a Web-based reporting portal to provide views of the eight data elements. * Public Information (output): * Same as identified for Option 1 Public Information (output). * Selected system will interface with a Web-based reporting portal.   Option 5 – Develop an enterprise contract management system that is based on statewide contract management business requirements identified by a representative stakeholder group.   * Information Gathering (input): * Business requirements will be identified; off-the-shelf systems will be identified and evaluated against the business requirements; system is developed and installed/implemented; appropriate technical, customer service, and agency/institution staff are trained so that the new system and reporting functionality are up and running January 1, 2013. * Funds will be allocated for the development and installation/implementation of an enterprise application. * Development, training, and support staff time will be allocated to ensure timely and accurate implementation of the system. * A statewide policy will be issued that requires state agencies and educational institutions to submit purchasing activity reports in the common format, to the Web interface, according to a common reporting timeline. * Ad Hoc Query (output): * Selected system will interface with a Web-based reporting portal to provide views of the eight data elements. * Public Information (output): * Same as identified for Option 1 Public Information (output). * Selected system will interface with a Web-based reporting portal. |
| Discussion of anticipated benefits:  Primary Recommendation: Option 1 – Develop a Web interface to which eight common data elements (defined above) generated by various existing contracts tracking resources may be submitted to fiscal.wa.gov.   * Minimizes organizational changes by using existing, familiar system, resources, and process. * Accepts a common data format generated by disparate systems/applications/resources. * Auto-generates a consistent look and feel Web report by uploading to a common Web reporting portal. * Maintains the security of individual agency/institutions contract management systems since the public view is made available through a completely separate Web portal.   Option 2 – Develop a Web interface to which eight common data elements (defined above) generated by various existing contracts tracking resources may be submitted to des.wa.gov.   * Same as identified for Option 1 benefits.   Option 3 – Establish common data elements that agencies/institutions will need to submit once a year to Enterprise Services who will be responsible for determining how information will be provided in response to public requests.   * Minimizes organizational changes by using existing, familiar system, resources, and process. * Allows agencies/institutions to design their own solution to meet the Legislative requirements. * Other than requiring ability to submit common data elements, this option would result in the least change in agencies’/institutions’ contract management processes and practices.   Option 4 – Purchase an enterprise contract management system that is based on statewide contract management business requirements identified by a representative stakeholder group.   * Establishes consistent data collection and reporting for all agencies/institutions. * Selected system features will exceed the Legislature’s reporting requirements, which will facilitate faster development to provide increased value. * System may include ready-to-use functionality that far exceeds the minimum reporting requirements, which may increase value/benefit and transparency for agencies, institutions, and the public. * System may include Web Services that will increase speed and flexibility of customization, which may increase value/benefit and transparency for agencies, institutions, and the public.   Option 5 – Develop an enterprise contract management system that is based on statewide contract management business requirements identified by a representative stakeholder group.   * Establishes consistent data collection and reporting for all agencies/institutions. * Developed system may increase opportunities for continuous improvement to provide increase value. |
| Discussion of anticipated concerns:  Primary Recommendation: Option 1 – Develop a Web interface to which eight common data elements (defined above) generated by various existing contracts tracking resources may be submitted to des.wa.gov.   * Current agency/institution contract tracking systems/resources don’t identify vendors by consistent names or vendor identification numbers such as Tax ID numbers (TINs). * Current contract tracking/reporting processes within individual organizations may require some change and may result in duplication of effort. * Thorough stakeholder research, communication, and training are imperative for the success of this option – we would be asking limited staff resources to add these responsibilities to their existing workload. * The development work will need to be identified by the DES Business Process & Design and Enterprise Technology Services management in order to meet the Legislative deadline.   Option 2 – Develop a Web interface to which eight common data elements (defined above) generated by various existing contracts tracking resources may be submitted to fiscal.wa.gov.   * Same concerns identified for Option 1. * Current output from fiscal.wa.gov is PDF, which cannot be searched or sorted – doesn’t appear to provide an option to export to MS Excel.   Option 3 – Establish common data elements that agencies/institutions will need to submit once a year to Enterprise Services who will be responsible for determining how information will be provided in response to public requests.   * Increase demand on Enterprise Services to consolidate information received. * Management and oversight would be manual. * Extensive effort to provide response to public requests. * Extensive effort to generate comparative data.   Option 4 – Purchase an enterprise contract management system that is based on statewide contract management business requirements identified by a representative stakeholder group.   * This is an unfunded initiative. * Project and organizational management best practices are not possible within the Legislative deadline. * Significant process change and duplication of effort may result by introducing a new system/application.   Option 5 – Develop an enterprise contract management system that is based on statewide contract management business requirements identified by a representative stakeholder group.   * Same concerns identified for Option 4. |
| List of alternate approaches:   * See above. |
| Attachments: |

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| Transparency Work Group  Table of Transparency Recommendations |
| Procurement Reform Work Team Name: Transparency Workgroup   |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | | **Primary Recommendation Summary** | **Develop a Web interface to which eight common data elements (defined above) generated by various existing contracts tracking resources may be submitted to fiscal.wa.gov.**   * **Information Gathering (input):** A Web interface will minimize duplication of effort and increased costs by using existing contract tracking resources, and meet the data requirements identified within HB2452. * **Ad Hoc Query (output)**: Web-based reporting, which will include identification of the submitting state agencies and educational institutions and the eight common data elements, on the existing fiscal.wa.gov will conform with the current site standards. Search and sort functionality will be explored and may be included by the January 1, 2013 deadline if technically feasible. * **Public Information (output):** A Web interface will standardize, consolidate, and centralize data that will be available to the public through the fiscal.wa.gov Website. | | | | | | Information that was collected and considered by the workgroup members, and found to be **in support** of the primary recommendation includes the following:   * The workgroup reviewed the contract reporting Websites for Colorado, Texas and Virginia that report information that is similar to the Legislative requirements in Washington. Colorado excludes Department of Transportation and higher education data due to data incompatibility issues. * Content and functionality of fiscal.wa.gov * Content and functionality of fiscal.wa.gov   + Publically viewable portal that allows the public to view reports of financial data that is uploaded to the Personal Services Contract Database (PCSD) (<http://www.ofm.wa.gov/contracts/reportgs/default.asp>).   + Reports are segmented down by year, i.e., 2012, 2011, 2010   + Reports are displayed by month/year   + Reports are linked by “Filed” (assigned a number by PCSD) and “Reported” (not subjected to filing with DES) <http://www.ofm.wa.gov/contracts/reports/default.asp#2012>. Filed and Reported are Summarized by Agency * Current contract tracking resources   + Enterprise Contracts Management System  1. Existing Web-based software database designed to manage and track contract information and documents, and is available for use by any agency or institution currently using the Personal Services Contract Database (PSCD) to report personal service contracts, PSCD was used as the model. 2. Currently used by 21 agencies. 3. Interfaces with the Statewide Vendor registration table creating consistency among vendor names and TIN numbers. 4. Enterprise Reporting Ad Hoc is already interfaced with ECMS so there would not be a learning curve as the Department (noted in the Bill) could run one report for all agencies using ECMS and post it to the website currently being used, Fiscal.wa.gov, to report Personal Services Contracts. 5. Agencies that use ECMS submit quarterly reports from ECMS to Enterprise Reporting Ad Hoc Queries to the Governor’s office for performance-based contracts (<http://sharepoint.dis.wa.gov/gmap/PBCReproting/Pages/default.aspx>).    * Additional research will need to be conducted to identify current contract tracking resources and practices. Limited research revealed the following: 6. Higher Education explains that their data systems are vastly different. 7. Other than the 21 state agencies using ECMS, we would need to research other agencies to find out what their current practices and resources.  * It is the workgroup’s understanding that the intent of the Legislation is to track and make available long-term contractual obligations/commitments.  1. Some agencies do not currently track one-off purchases in their contract tracking systems. | | | | | |  | **Primary Recommendation: Option 1** | **Option 2** | **Option 3** | **Option 4** | **Option 5** | | **Develop a Web interface to which eight common data elements (defined above) generated by various existing contracts tracking resources may be submitted to fiscal.wa.gov.** | **Develop a Web interface to which eight common data elements (defined above) generated by various existing contracts tracking resources may be submitted to des.wa.gov.** | **Establish common data elements that agencies/institutions will need to submit once a year to Enterprise Services who will be responsible for determining how information will be provided in response to public requests.** | **Purchase an enterprise contract management system that is based on statewide contract management business requirements identified by a representative stakeholder group.** | **Develop an enterprise contract management system that is based on statewide contract management business requirements identified by a representative stakeholder group.** | | **Information Gathering (input)** | * DES Business Process & Design and Enterprise Technology Services have the resources and bandwidth to develop a Web interface to which data may be uploaded by state agencies and educational institutions. * Existing contract tracking resources can generate a common report format that will upload through the Web interface. * Agencies/institutions may program existing systems/applications to automatically submit reports in compliance with the agreed upon reporting timeline. * Agencies/institutions using existing contract tracking applications that can generate the common reporting format will be able to submit reports to DES through the Web interface. * Agencies/institutions that do not use a contract tracking application may document the common data elements in an Excel spreadsheet or work document and upload to the DES Web interface. * A statewide policy will be issued that requires state agencies and educational institutions to submit purchasing activity reports in the common format, to the Web interface, according to a common reporting timeline. * Adequate research will be conducted among stakeholders to make sure that the disparate systems, applications, and resources will be able to generate the common reporting format. * Adequate communication and training will be provided to make sure all state/institution personal who will be responsible for submitting the reports know how, where, and when to submit. * Posting to fiscal.wa.gov, which is owned by OFM, will require agreement and coordination to add this content to the existing Web portal. | * Same as identified for Option 1 Information Gathering (input), with the exception of the last bullet regarding posting to fiscal.wa.gov. | * Agencies/institutions will use existing contract management systems, applications, or resources to document the eight common data elements. * A statewide policy will be issued that requires state agencies and educational institutions to collect and make available to the public purchasing activity reports according to a common reporting timeline. * Once a year, agencies / institutions will be required to submit a report based on a set schedule. | * Business requirements will be identified; off-the-shelf systems will be identified and evaluated against the business requirements; system is procured and installed/implemented; appropriate technical, customer service, and agency/institution staff are trained so that the new system and reporting functionality are up and running January 1, 2013. * Funds will be allocated for the procurement and installation/implementation of an enterprise application. * Agencies/institutions may program existing systems/applications to automatically submit reports in compliance with the agreed upon reporting timeline. * Development, training, and support staff time will be allocated to ensure timely and accurate implementation of the system. * A statewide policy will be issued that requires state agencies and educational institutions to submit purchasing activity reports in the common format, to the Web interface, according to a common reporting timeline. | * Business requirements will be identified; off-the-shelf systems will be identified and evaluated against the business requirements; system is developed and installed/implemented; appropriate technical, customer service, and agency/institution staff are trained so that the new system and reporting functionality are up and running January 1, 2013. * Funds will be allocated for the development and installation/implementation of an enterprise application. * Development, training, and support staff time will be allocated to ensure timely and accurate implementation of the system. * A statewide policy will be issued that requires state agencies and educational institutions to submit purchasing activity reports in the common format, to the Web interface, according to a common reporting timeline. | | **Ad hoc query (output)** | * DES Business Process & Design has the resources and bandwidth to develop a Web-based reporting portal from which viewers may search and sort submitting agency/institutions and the eight data elements. An acceptable interim solution that will meet the Legislative requirement is a Web-based listing, by agency/institution, of the eight data elements, with the intent to add the search and sort functionality. * All agencies and institutions that are required by Legislation to report will be able to produce or create a common output format that may be uploaded to the Web interface. * View and function may be limited to existing view and functionality of fiscal.wa.gov. | * Same as identified for Option 1 Ad Hoc Query (output), with the exception of the last bullet regarding view and functionality of fiscal.wa.gov. | * Agencies/institutions may develop additional functionality – beyond “view” – and will be responsible for developing, training, and maintaining this functionality. | * Selected system will interface with a Web-based reporting portal to provide views of the eight data elements. | * Selected system will interface with a Web-based reporting portal to provide views of the eight data elements. | | **Public information (output)** | * + To meet the Transparency requirements of the Legislation, contracts **will** include the following:   1. Goods & services   2. Technology   3. Personal services   4. Client services   + For the purposes of this effort, contracts **will not** include the following:  1. Direct buy purchases 2. Non-fiscal agreements 3. Public Works 4. Inter-local agreements performed under RCW 30.34 5. Sub-grants (sub-recipient pass through funds from Federal and other non-profit sponsors) 6. Grants 7. Loans 8. Purchase orders | * Same as identified for Option 1 Public Information (output). | * Same as identified for Option 1 Public Information (output). * Agencies/institutions will be responsible for developing an on-demand reporting resource with which the eight common data elements are viewable by the public. | * Same as identified for Option 1 Public Information (output). * Selected system will interface with a Web-based reporting portal. | * Same as identified for Option 1 Public Information (output).   Selected system will interface with a Web-based reporting portal. | | **Anticipated benefits** | * Minimizes organizational changes by using existing, familiar system, resources, and process. * Accepts a common data format generated by disparate systems/applications/resources. * Auto-generates a consistent look and feel Web report by uploading to a common Web reporting portal. * Maintains the security of individual agency/institutions contract management systems since the public view is made available through a completely separate Web portal. | * Same as identified for Option 1 benefits. | * Minimizes organizational changes by using existing, familiar system, resources, and process. * Allows agencies/institutions to design their own solution to meet the Legislative requirements. * Other than requiring ability to submit common data elements, this option would result in the least change in agencies’/institutions’ contract management processes and practices. | * Establishes consistent data collection and reporting for all agencies/institutions. * Selected system features will exceed the Legislature’s reporting requirements, which will facilitate faster development to provide increased value. * System may include ready-to-use functionality that far exceeds the minimum reporting requirements, which may increase value/benefit and transparency for agencies, institutions, and the public. * System may include Web Services that will increase speed and flexibility of customization, which may increase value/benefit and transparency for agencies, institutions, and the public. | * Establishes consistent data collection and reporting for all agencies/institutions. * Developed system may increase opportunities for continuous improvement to provide increase value. | | **Anticipated challenges** | * Current agency/institution contract tracking systems/resources don’t identify vendors by consistent names or vendor identification numbers. * Current contract tracking/reporting processes within individual organizations may require limited change and may result in limited duplication of effort. * Thorough stakeholder research, communication, and training are imperative for the success of this option – we would be asking limited staff resources to add these responsibilities to their existing workload. * The development work will need to be identified by the DES Business Process & Design and Enterprise Technology Services management in order to meet the Legislative deadline. | * Same concerns identified for Option 1. * Current output from fiscal.wa.gov is PDF, which cannot be searched or sorted – doesn’t appear to provide an option to export to MS Excel. | * Increase demand on Enterprise Services to consolidate information received. * Management and oversight would be manual. * Extensive effort to provide response to public requests. * Extensive effort to generate comparative data. | * This is an unfunded initiative. * Project and organizational management best practices are not possible within the Legislative deadline. * Significant process change and duplication of effort may result by introducing a new system/application. | * Same concerns identified for Option 4. | |

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| Transparency Work Group  Advisory Committee Question Response |
| Annual list of contracts – Section 23(1)  Q1. What should be included in the definition of “contracts” for purposes of this section?  Workgroup Response:     * + To meet the Transparency requirements of the Legislation, contracts will include the following:   1. Goods & services   2. Technology   3. Personal services   4. Client services   + For the purposes of this effort, contracts will not include the following:  1. Direct buy purchases 2. Non-fiscal agreements 3. Public Works performed under RCW 39.04 4. Architects & Engineers performed under RCW 39.80 5. Inter-local agreements performed under RCW 30.34 6. Sub-grants (sub-recipient pass through funds from Federal and other non-profit sponsors) 7. Collaborative research agreements (see Section 14 of SSHB 2452) 8. Grants 9. Loans 10. Purchase orders   Publicly Available list of all contracts – Section 23(1)  Q2. How should this list be made “public”, posted on a DES webpage, linked from DES to the agency website? Should there be standards for what the list looks like and how it should be displayed?  Workgroup Response: Our primary recommendation is to develop a Web interface to which eight common data elements, generated by various existing contracts tracking resources, may be submitted to fiscal.wa.gov. The information will conform to the current site standards and search and sort functionality should be included if technically feasible.  Data Elements for Posting – section 23(1)  Q3. For each data element listed in this subsection, provide a definition of that element and what information should be provided for that element. For example, does “funding source” mean tax or fee based revenue, or type of account from which the funds were provided – general fund verses a revolving fund?  Workgroup Response: The data elements listed in Section 23(1) are defined as follows:   * Contracting agency – The appropriate “agency title” and “agency number” as listed in [OFM SAAM 75.20.20](http://www.ofm.wa.gov/policy/75.20.htm) for the agency that administers the contract. * Contractor – The name, as well as “doing business as” of the individual, company, corporation, firm, or combination thereof with whom the purchaser develops a contract for the procurement of goods and services. This will meet the current requirement. Discussions about added value and development may include OFM vendor number, address, state of incorporation, Washington State UBI number, OMWBE status, Washington small business status, Washington Veteran-owned business status. * Purpose of the contract –   Option 1: Submit Free Form information stated on the contract in the purpose section. For example –WDFW is one of 8 state and federal organizations who have partnered to complete a Reband Trout Rangewide Status Review. The partner agencies will provide cash and in-kind in support of this project.  Option 2: Establish major categories for different types of contracts (Higher Ed, Transportation, Natural Resources, Social and Health, Recreation, etc. Include subcategories of each major category. Subcategories would need to be further defined.  Effective dates – The date as of which a contract or other instrument enters into force OR the date on which a one-time buy is made.   * Periods of performance – The date(s) during which contracted work is performed OR the date on which a one-time is made. * Cost of the contract – Dollar amount may be entered based on firm price, estimated value, or not-to-exceed price. Current systems used by agencies/institutions collect a variety of costs. Discussions about added value and development may include distinguishing costs in categories such as market value of the products at the time of purchase, no maximum amount, budgeted amount (do not exceed amount), estimated amount, per unit cost, and amount agreed to by agency and vendor upon signing. * Funding source – The underlying source for the funds used to make purchases against a contract, which may include   + State Funds   + Federal Funds   + Other Fund Sources (such as foundations, private corporations, or self-sustaining funds)   + Various funding sources (some contracts such as term supply contracts and master contracts might be used by multiple funding sources) * Substantive modifications to the contract – Changes to any of the six common data elements above. * Competitively procured or sole source – Indication of one procurement method or the other. |

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| Procurement Management Guidelines Work Group  Alternative Dispute Resolution Recommendation 1 |
| |  | | --- | | 2SHB2452 Reference for Recommendation: NEW SECTION Sec.20 Procurement Management | | Primary Recommendation  In an effort to resolve a bona fide dispute between the parties, an appropriate remedy is selected which is intended to precede any action in a judicial or quasi-judicial tribunal.  Use a risk matrix to guide preparer to recommended options. Bring all currently used optional language to one place with discussion to guide selection. In particular, how to evaluate risk in making appropriate selection. Allow agencies to select appropriate language fitting their business model.  The following options (there are added variations in practice such as payment of costs of the dispute, “renderings are not admissible into following court action”, etc.) are currently in DIS and OFM templates. The AGO provides a table that is helpful. There is a consistency in use of these options in general contracting.  Low dollar amount and simple contract (say, as an example, for less than $5,000). (Option 1) Refer dispute in writing to agency head or delegate who decides and decision is final. (Option 2) Refer dispute in writing to agency head. Agency head or delegate’s decision is subject with option to go to ADR.  Low dollar amount and uncomplicated contract. Refer in writing to a Dispute Resolution Panel made up of representatives of both parties who select another party to make the Panel 3 people. The Panel reviews the facts, contract terms and applicable statutes and rules and makes a determination of the dispute. The determination is final and binding.  Higher risk, larger dollar amounts and more complex contracts (contract complexity sets the use of this option). Initiating party submits complaint in writing to other party. Use fixed timelines for all communications in writing to be moved forward. Turn complaint back in written form back to other party. Send back in written form until issue is resolved or cannot be resolved this way. If not resolved use a Dispute Resolution Panel. The decision rendered by the Panel would be assumed final if a consensus was reached. (Option 1) Provide option for ADR if the Panel decision isn’t acceptable. (Option 2) Put a condition into the contract stating that both parties agree to be bound by the determination of the Panel.  For standardized interagency agreements, use a Dispute Board. (Option 1) The Board’s determination is final and binding. (Option 2) Either party to request intervention by the Governor (RCW 43.17,330) where the Governor’s process will control. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.) See above | | Assumptions / Pre-requisites / Dependencies:  Agencies would be working with their AAG on usage. | | Discussion of anticipated benefits:  Improvement in making best selection of dispute provision options | | Discussion of anticipated concerns:  Want to give agencies control of using the language appropriate to their business model. | | List of alternate approaches: | | Check which ever applies below:  I do not support this recommendation;  5 I support this recommendation as is;  I support this recommendation with the Suggested Changes below. | | Please insert Suggested Changes here: | |

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| Procurement Management Guidelines Work Group  Alternative Dispute Resolution Recommendation 1A |
| |  | | --- | | 2SHB2452 Reference for Recommendation: NEW SECTION Sec.20 Procurement Management  Subsection 1(c) Policies and procedures for alternative dispute resolution processes. | | Primary Recommendation  I believe that alternate dispute resolution processes should be a general recommendation for inclusion in personal service contracts but with qualifications.  For instance:   * To *not* include a dispute resolution clause in “one-time” contracts (*e.g.* engagement of a speaker); * To *not* include a dispute resolution clause in contracts with a value less than $30,000.00 * To *not* include a dispute resolution clause in contractor pool contracts *but* include a version of such a clause in any project work order; * For longer-term sole provider contracts which do not employ project work orders ( *e.g.* ongoing consultancy), include a formalized dispute resolution process; and, * Do not in any instance employ a binding arbitration clause. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.) Review of sister state practices. | | Assumptions / Pre-requisites / Dependencies:   * That the dispute resolution procedure is adaptable by agencies to suit their unique business model * That the process is bilateral, meaning a rep from the agency and a rep from the contractor * That individuals from either party directly involved as the day-to-day liaisons in the contractual relationship are not involved * That the dispute resolution process is a condition precedent to legal action * That inclusion of the dispute resolution process does not impede the right of the parties to mutually agree to a different process—in other words it’s not the sole remedy * That negotiations during the process are not admissible in evidence should legal action follow | | Discussion of anticipated benefits:  This places the parties on equal footing. The long-time OFM-recommended dispute resolution clause was unilateral and unfair on its face. Most contractors balked at that, they shouldn’t if they have mutual representation.  All parties want to avoid legal action. | | Discussion of anticipated concerns:   * An agency mistakenly agrees to a binding arbitration clause * Such a dispute clause may be inappropriate for one-time contracts of short duration. * Such a dispute clause may be inappropriate for “low-dollar” contracts * Such a dispute clause may be inappropriate for ”second-tier” type contracts when the second-tier arrangement doesn’t warrant such a clause. If the second-tier arrangement does warrant inclusion, put it in the project work order. | | List of alternate approaches: This is a clause I’d suggest:  **Disputes**  *Preamble*  Any dispute arising out of or relating to this Contract shall be resolved in accordance with the procedures specified in this Section XX.  The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.  Contractor and the *agency* agree to act immediately to resolve any such disputes agreeing that time is of the essence in the resolution of disputes.  *Negotiation*  The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Contract [work order] promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this contract.  Any person may give the other party written notice of any dispute not resolved in the normal course of business.  Within 10 business days after delivery of the notice, the receiving party shall submit to the other a written response.  The notice and response shall include (a) a statement of that party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive.  Within 20 days after delivery of the initial notice, the executives of both parties shall meet at a mutually acceptable time and place (video or teleconference acceptable), and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute.  All reasonable requests for information made by one party to the other will be honored.  Except to the extent that disclosure is required by applicable law or court order, all negotiations pursuant to this clause are confidential and shall be treated by the parties as statements made in compromise negotiations for purposes of the rules of evidence.  If the matter has not been resolved by these persons within 30 days of the initial notice, the dispute shall be referred to more senior executives of both parties who have authority to settle the dispute and who shall likewise meet to attempt to resolve the dispute.  The *agency* and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract which are not affected by the dispute.  Nothing in this Contract shall be construed to limit the parties’ choice of a mutually acceptable Alternate Dispute Resolution method in addition to the dispute resolution procedure outlined above. | |

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| Procurement Management Guidelines Work Group  Amendment Recommendation |
| |  | | --- | | 2SHB2452 Reference for Recommendation: NEW SECTION Sec.20 Procurement Management | | Primary Recommendation  **Criteria for contract amendments**:   1. Develop “guidelines” to replace Washington Purchasing Manual, OFM Filing, DIS 904/903 consult, and etc. Guidelines must include a statement that these are guidelines only, examples of best practices and not requirements. 2. Guidelines should include recommendations for agencies to apply best practices prior to executing an amendment. Factors that should be considered:  * Do current market conditions justify a solicitation to replace the contract. * Increases to compensation * Adjustments to Scope of Work * Indefinite extensions  1. When drafting and implementing changes to contracting laws, regulations, rules and policy, consideration should be given to allowing an exemption for amendments to current/active contracts.   Reason: When you have an existing contract an agency can’t force a contractor to accept changes. When approaching the end of the contract term an agency should able to extend a contract under the requirements that existed when the contract was executed, rather than face the possibility of having to a) negotiate with the contractor, who may demand an adjustment to compensation or b) let the contract expire because an agreement with the contractor cannot be reached.   1. DES should offer and require training for all who develop and manage/administer contracts in place of a contract review/approval process. This would be a change in approach from submitting justification for approval to an emphasis on training in best practices. A portion of the time DES currently spends on review and approval could be spent providing training. 2. Amendment to sole source contracts:  * Amendments to sole source contracts, which are above the direct buy limit, should be filed/reported in the same manner as the original contract. * Amendments to sole source contracts, which increase the contract value to an amount above the direct buy limit should be filed/reported.  1. Allow amendments to contracts that have expired, even after the contract End Date, as long as there is mutual agreement between the parties. 2. DES create and maintain amendment templates. 3. For transparency, amendments should be posted at the same location as contracts. 4. There should not be a limit to the length (term) of a contract. The term of a contract should be based strictly on factors that relate to the type of procurement. Examples: the commodity, best value for the state and return on investment for the contractor/vendor. 5. For long term contracts (6 years or more) there should be a limitation on the length of term for extensions. Example: Beyond 6 years, amendments should be limited 1 year increments per extension. However, there should not be a limitation on the number of extensions. The number of extensions should be based on type of procurement/commodity. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.) | | Assumptions / Pre-requisites / Dependencies: | | Discussion of anticipated benefits: | | Discussion of anticipated concerns: | | List of alternate approaches: | | Check which ever applies below:  I do not support this recommendation.  2 I support this recommendation as is.  3 I support this recommendation with the Suggested Changes below. | | Please insert Suggested Changes here:  I disagree with the way #5 above is worded – I want some flexibility in increasing the amendment amount for a sole source without going through the sole source approval process again.  Re #10 above, there should guidance as the length of the extensions but no iron clad rule. The goal is to ensure we have competition and transparency but we need to be careful about making new “rules. I believe best practices would limit the length but every time we attempt to set something in black and white we start dealing with the exceptions.  Paragraph 6 does not make sense. How can you have an amendment to a contract that has expired? Once expired, you do not have a contract to amend. | |

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| Procurement Management Guidelines Work Group  Rule Clarity Recommendation |
| |  | | --- | | 2SHB2452 Reference for Recommendation: NEW SECTION Sec.20 Procurement Management | | Primary Recommendation  In developing regulations, rules and policies there needs to be a greater effort in providing clarity to the extent that potential varying interpretation is minimized. The current regulations, rules and policies are written in a manner that can too often be interpreted several ways, sometimes to extreme ends of the spectrum. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.) | | Assumptions / Pre-requisites / Dependencies: | | Discussion of anticipated benefits:  Seems obvious and reduces potential audit findings. | | Discussion of anticipated concerns: | | List of alternate approaches: | | Check which ever applies below:  I do not support this recommendation.  4 I support this recommendation as is.  I support this recommendation with the Suggested Changes below. | | Please insert Suggested Changes here: | |

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| Procurement Management Guidelines  Rule Changes Recommendation |
| |  | | --- | | 2SHB2452 Reference for Recommendation: NEW SECTION Sec.20 Procurement Management  Implementation of contracting rule/policy changes | | Primary Recommendation  When implementing a rule change, a contract would be exempt if the solicitation had been posted prior to the effective date of the rule change. This would be a blanket exemption for all contracts meeting the posting criteria.  EXAMPLE: SAAM updates: There have been times when a change to rules in the SAAM were not released until days before the effective date. All unexecuted contracts not meeting the rule requirements have to be revised or cancelled. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.) | | Assumptions / Pre-requisites / Dependencies: | | Discussion of anticipated benefits:   1. The contracting process could move forward regardless of possible pending rule changes providing projects with tight timelines a greater chance for success. 2. Cancelled solicitations and contract awards negatively impact vendors, possibly deterring them from doing business with the state. 3. Reduces waste in terms of time and money for both the state and vendors. | | Discussion of anticipated concerns:   1. Agencies may rush to post solicitations to beat a rule change.   However, impact would be minimal because, agencies who would rush to post a solicitation are mostly likely to rush contract execution. So this is basically lowering the bar a bit, but the advantages are substantial.   1. An exempted contract may include issues that the new rule change was meant to address. | | List of alternate approaches:  An alternative to a blanket exemption for all contracts where the solicitation was posted prior to the effective date of a rule change could be a process allowing a request and approval for an exemption on a case by case (contract by contract) basis. | | Check which ever applies below:  1 I do not support this recommendation.  3 I support this recommendation as is.  I support this recommendation with the Suggested Changes below. | | Please insert Suggested Changes here: | |

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| Procurement Management Guidelines Work Group  Electronic Signature Recommendation |
| |  | | --- | | **2SHB2452 Reference for Recommendation: NEW SECTION Sec.20 Procurement Management** | | Primary Recommendation  The implementation of electronic signature of contract documents (including procurement documents, contracts, amendments, memoranda of understanding, etc.) is encouraged. Prior to an agency embarking upon a program of electronic signatures for such documents, we recommend that the policy require that as a prerequisite that a respective agency adopt an auditable policy which establishes the type of electronic signatures it will utilize and which it will honor.  It is recommended further that as each agency adopts an electronic signature policy that it undertake a documented analysis to equate the rigor of the electronic signature utilized to the corresponding agency risk exposure represented by the document to be electronically signed. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.) Chapter 19.34 RCW – Digital signatures—Washington Secretary of State. Washington General Court Rule 30 (GR 30) – Electronic Filing. | | Assumptions / Pre-requisites / Dependencies: The utilization of electronic transfer of documents for the conduct of global commerce is certain to expand. This growth in usage will require reliable authentication of execution of the documents electronically exchanged between the parties to a document. | | Discussion of anticipated benefits: Facilitation of commerce. Quicker turn-around of documents. Ability for a signatory to execute a document from any location. | | Discussion of anticipated concerns: That the chosen form of electronic signature is susceptible to interference or forgery (“hacking”). The electronic signature should have a reliability, defensibility and rigor correlative to the value of the transaction represented by the respective document. | | List of alternate approaches: None. The statute encourages the employment of electronic signatures. | | Check which ever applies below:  I do not support this recommendation.  4 I support this recommendation as is.  2 I support this recommendation with the Suggested Changes below. | | Please insert Suggested Changes here:  Put in that using original signatures be an option especially on high risk contracts or complex contracts that might be contentious in the area of accepting deliverables. Leave to agencies when this method would be employed.  Should consider for lower-valued contracts the ability to accept PDF copies of signed contracts. There may be additional criteria beyond contract value to consider. DES in conjunction with AGO and Secretary of State may want to consider proposed legislation to clarify and more clearly define use of electronic signatures. | |

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| Procurement Management Guidelines Work Group  Contract Follow-on Use Recommendation |
| |  | | --- | | **2SHB2452 Reference for Recommendation: NEW SECTION Sec.20 Procurement Management** | | Primary Recommendation  Allow the follow on use of all solicitations, where the formal process was utilized, by agencies other than the originating (initial) agency.  Rather than requiring a solicitation to proclaim “follow-on use”, write into the regulations that follow-on use by agencies is permitted and can be expected. …A solicitation can be used for award of a contract with another agency(s).  Although the opportunity to utilize another agency’s solicitation to obtain goods or services might be limited based on differing needs between agencies, this should be an available option when appropriate. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.) | | Assumptions / Pre-requisites / Dependencies:  Agencies can represent the State as well as the agency when issuing a solicitation, …they can issue solicitations on behalf of the state. | | Discussion of anticipated benefits:   * In many cases it would eliminate the need for an agency to develop and administer a solicitation for a good or service that has already been procured by the initial agency, reducing time and administrative costs. * May reduce bid/proposal pricing based on the possibility of higher volume. * Creates an incentive for bidders to bid on a solicitation where the dollar value (for the initial agency) is minimal. Rather than pass up on submitting a bid, they might be encourage to bid, knowing there’s the possibility that other agencies might offer another contract down the road. * Creates an incentive to the contractor to provide excellent service, due to the possibility of additional contracts. (This is assuming agencies can only utilize follow-on use if the contractor has been providing satisfactory services to the initial agency. * Allows for quicker access to goods or services. * Master Contracts: Allowing follow-on use between agencies could help DES recognize the need for a master contract. They could use what has been learned from the initial and follow-on use agencies in developing a master contract which could eventually replace the original contract. * Perhaps some form of compensation could be provided by follow-on agencies to the initial agency to cover a portion of the admin costs. * Might promote greater cooperation between agencies. * Could benefit smaller agencies with limited resources to obtain goods and services without having to apply resources to the development and evaluation of a solicitation. * Could benefit smaller agencies through the power of volume purchasing. It provides greater strength to the smaller agencies. Especially if the process allows for cross agency cooperation related to corrective actions. | | Discussion of anticipated concerns:   * Impact on small business: It could be argued that this might inhibit opportunities to small business for state contracts, however, it could increase opportunities. Example: If an agency awards a contract and later another agency needs a similar good or services, that agency could contact the small business and ask if they are interested in providing the goods or services to that agency.   This would allow the small business to start off with a smaller contract, then create an opportunity for the small business to grow through additional contracting opportunities.   * If adopted, the process needs to provide for controls to minimize any potential workload issues on the initial agency. * Not all solicitations will meet the needs of other agencies and they don’t have to use it. * Each agency must negotiate and award its own contract, which is based on the original solicitation. | | List of alternate approaches: | | Check which ever applies below:  1 I do not support this recommendation.  4 I support this recommendation as is.  I support this recommendation with the Suggested Changes below. | | Please insert Suggested Changes here: | |

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| Procurement Management Guidelines Work Group  Model Contract Terms Recommendation |
| |  | | --- | | 2SHB2452 Reference for Recommendation: NEW SECTION Sec.20 Procurement Management | | Primary Recommendation  The 3 combined agencies (GA, OFM, DIS) should work on their existing contract terms and conditions to combine them.  Create templates.  Do not allow the GA/OFM/DIS group to break out into sub groups.  Have DES look at DSHS contract system that is already in place (ACD – Agency Contracts Database). | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.) | | Assumptions / Pre-requisites / Dependencies:  Same language on all contracts that are accessible through DES.  Assume team will look at copyright issues  Team to contact AGO’s office when combining contracts | | Discussion of anticipated benefits  Transparency for agencies and vendor community  Ease of employees when going to a new state agency | | Discussion of anticipated concerns:  3 combined agencies (GA, OFM, DIS) can’t come to a unified decision. | | List of alternate approaches: | | Check which ever applies below:  I do not support this recommendation;  3 I support this recommendation as is;  2 I support this recommendation with the Suggested Changes below. | | Please insert Suggested Changes here:  Representative from AGO needs to be part of process to review, revise, draft, etc. model contract terms and conditions. Need to look at all clauses and determine those that are mandatory versus optional, and should offer two to three versions based on contract simplicity compared to complexity. This workgroup needs to recognize and acknowledge agency specific authorities that could change the language for certain terms and conditions. This is a very laudatory (ambitious) goal, but any effort needs to check-in with efforts to date to establish standard interagency template for use between state agencies (unsuccessful to date).  Provide database or online repository with various forms of provisions for use in contracts. Include explanations of what each provision does and why you would use one provision over another. Include basic description or list of provisions that should be included as standard boilerplate in each contract (i.e., governing law and venue, assignment, inspection and maintenance of records, independent contractor, etc). Include “model” contracts for different types of purchases that give staff a starting place but do not require use of the model terms and provisions.  Include guidelines and a risk assessment process to help staff determine when it is appropriate to use a Purchase Order form (acceptance signified by performance) versus when to insist on a contract signed by both parties. Provide guidance on best practices when dealing with a purchase order “battle of the forms.”  Include guidance about what types of provisions agencies should be wary of when signing a vendor’s form of agreement. | |

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| Procurement Management Guidelines Work Group  Contract Monitoring Filing Approval Recommendation |
| |  | | --- | | **2SHB2452 Reference for Recommendation: NEW SECTION Sec.20 Procurement Management** | | Primary Recommendation  This is a suggestion regarding a different (proposed) approach to ensuring the State gets the most value when procuring goods and services. This approach would be based less on filings and approvals and more on monitoring of contracts and contracting activities.  **The Current Process:**  Over the years the State has built a system of checks and balances to ensure contracting is conducted in a way that provides the best value for the State while maintaining fair and open opportunities for vendors. The approach over the years has been to impose progressively stricter requirements to counter perceived weaknesses in the procurement process, usually in reaction to failure by an agency or vendor that resulted in losses to the State. This has resulted in multiple layers of restrictions meant to prevent a repeat of past failures. However, in many cases these restrictions are counterproductive. They can inhibit an agency’s ability to obtain the best value.  Examples:   * Increased administrative costs across the board, * delays to implementation and, * they tend to drive away some of the best vendors, those who have plenty of work, because of administrative issues.   **Proposed Process:**  To ensure the protection of State resources and best values for the State, I’d like to suggest a process built less on obtaining approvals and more on monitoring, …no filings or approvals. Instead, require all contracts be entered into a statewide contracts database, whether that be ECMS or another database. DES staff who currently perform reviews and consults could monitor contracts via the database. Monitoring could be performed randomly based on flexible criteria established by DES. If DES staff notice a problematic contract, they would have options available to correct systemic problems within that agency.  Examples:  DES staff could:   * choose to contact the agency and have the agency justify their process, * quietly select/monitor other contracts from that agency to determine a pattern then contact the agency and/or, * alert the Auditor’s Office.   This process would be based on the IRS example, …you never know which contracts are going to be monitored and you certainly don’t want to have to answer to DES and/or the Auditor’s Office. The process would be based on potential ramifications to an individual and/or agency.  Penalties could be imposed, such as:   * The agency would be required to file/justify all contracts over a specific dollar amount for the next years, * The contract manager could be prohibited from managing/administering contracts for the next years and/or, * impose monetary penalties on the contract manager and possibly their supervisor, similar to those currently available in SAAM. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.) | | Assumptions / Pre-requisites / Dependencies:  Former OFM staff will be able to monitor contracts and amendments via a single web site. | | Discussion of anticipated benefits:  Rather than impact all agencies to some degree on every procurement, this process would only impact agencies that aren’t following procurement requirements and/or best practices. It could also reduce the impact on DES staff by allowing monitoring efforts to be based on DES workload rather than the tidal flow of agency contract awards. | | Discussion of anticipated concerns:  Would require more emphasis on training. | | List of alternate approaches: | | Check which ever applies below:  2 I do not support this recommendation.  2 I support this recommendation as is.  I support this recommendation with the Suggested Changes below. | | Please insert Suggested Changes here: | |

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| Procurement Management Guidelines Work Group  Performance Based Contracting Recommendation |
| |  | | --- | | **2SHB2452 Reference for Recommendation: NEW SECTION Sec.20 Procurement Management – Subsection 3:**  ***3. To the extent practicable, agencies should enter into performance-based contracts . . . identify expected deliverables and performance measures or outcomes . . . use appropriate techniques-consequences or incentives or both-to ensure agreed upon value is received. Payment should be contingent on contractor achieving performance outcomes.*** | | **Primary Recommendation**  **Adopt consistent performance based (PBC) contracting standards based on Executive Order** [10-07](http://www.governor.wa.gov/execorders/eo_10-07.pdf).**existing SAAM 15.40.20 guidelines and considering SAO’s 2011 review, including how it applies to purchase orders. Also, harmonize guidance with reporting requirements.**  **Include exemption process where it doesn’t make sense to require PBC, as per SAAM. Also simplify exemption process by listing common exemptions in the policy:**  *In those cases where it is not cost effective for the state to use a performance-based contract, a cabinet agency may exempt a contract from the requirement to include deliverables, performance measures and/or outcomes. All exemptions must be approved in writing by the agency director before the agency enters into the contract.*  **Include expected deliverables, performance measures/outcomes to provide a standard or measure for performance of the contracted services, also to determine if/when contractor has successfully completed performance, and when and how much the contractor should be paid.**  **Increase use of/work to improve vendor feedback/issue documentation process by end users for best ability to monitor, be aware of, and take progressive action re poor performing contracted vendors.** | | **References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)**   * ***State Auditor’s report on Performance Based Contracting, including Risk Assessment and Monitoring Plan (RAMP) approach (see executive summary pa 6 and Options and Recommendations section pa 39):***   <http://www.sao.wa.gov/auditreports/auditreportfiles/ar1004877.pdf>   * ***Performance Based Contracting Executive Order***: * ***OSP’s proactive Contractor Performance Feedback Survey tool:***  [**http://gaapoly01/ContractEval/createPerformanceSCR1.aspx**](http://gaapoly01/ContractEval/createPerformanceSCR1.aspx) * ***OFM SAAM 15.40.20 Guidelines***:   At a minimum, performance-based contracts must identify expected deliverables, performance measures or outcomes; and payment is contingent on their successful delivery. Performance-based contracts also use appropriate techniques, which may include but are not limited to, consequences and/or incentives to ensure that agreed upon value to the state is received.  Performance-based contracts:   * Emphasize results related to output, quality and outcomes rather than how the work is performed; * Specify deliverables, performance standards and/or an outcome orientation and clearly defined objectives and timeframes; * Use quality assurance plans, measurable performance standards and/or outcomes; * Provide performance incentives and/or consequences for non-performance; and * Tie payment to deliverables, performance measures and/or outcomes.   Performance-based contracting must be carefully considered since deliverables, performance measures and/or outcomes need to be clearly identified in the contract, so that achievement of those deliverables, performance measures and/or outcomes is apparent to all. | | **Assumptions / Pre-requisites / Dependencies:**  Assumes the following sample deliverables, performance measures and outcomes can be included that:   * Define the standards for measuring contractor performance * Provide a means to monitor performance * Measure satisfaction with the contractor * Provide data for program evaluation   Assumes good statements of deliverables, performance measures or outcomes are:   * Clearly written * Easily understood by contractors, state agencies, and the general public; * Focused on the performance expected from the contractor * Well defined and consider both the quantitative (how much?) and qualitative (how well?) aspects of performance * Relevant, timely, verifiable and reportable * Realistic in terms of available resources, funding and timelines, and recognize external factors beyond the control of the system   Assumes contract managers check the funding source or statutory authority to determine whether any specific deliverables, performance measures or outcomes are mandated and consider:   * How the agency will know the service has actually been provided * How the agency will know the *quality* of services has been provided and include a mechanism for measuring quality * What specific deliverables, performance measures or outcomes the agency is looking for, such as enhanced job retention, reduced recidivism, or improved safety of citizens following a natural disaster * Whether payment is contingent on an event, product, or outcome. If so, how the agency will ascertain that the contractor has satisfied the requirement. If the payment points are not clear, consider the benefit of tying payment to an event, product or outcome   Assumes additional training can be provided to contracting staff and end users  Assumes monitoring and reporting will occur  Dependent upon end users regularly documenting and submitting all performance concerns to agency contracting staff (and DES for master/single agency contracts) so that appropriate action can be taken, which relies upon proper and consistent documenting of issues | | **Discussion of anticipated benefits:**   * Encourage and promote contractors to be innovative and to find cost effective ways to deliver services * Result in better prices and performance * Give contractors more flexibility in how to achieve results * Shift more risk to contractors so they are responsible for achieving the outcomes * Provide incentives to improve contractor performance and tie compensation to achievement * Strengthen agencies contract monitoring and management practice | | **Discussion of anticipated concerns:**   * Adequate management information systems may not be in place to correctly interpret data * Meeting expected deliverables, performance measures or outcomes may be contingent on factors outside of the contractor’s control * Contractors may have limited financial resources and capacity to assume risk * Contractors fear a cash flow crisis and financial uncertainty * Contractors may have under-developed financial information management systems | | **List of alternate approaches:**   * Continue with current methods without additional training or monitoring | | Check which ever applies below:  I do not support this recommendation.  3 I support this recommendation as is.  2 I support this recommendation with the Suggested Changes below. | | Please insert Suggested Changes here:  Mandate this to all agencies not just cabinet ones.  Higher Education would like to have the flexibility to use performance based contracts when appropriate, but to not be required to use them. | |

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| Procurement Reform Management Guidelines Work Group  Performance Measures Benchmarks Recommendation |
| |  | | --- | | **2SHB2452 Reference for Recommendation :NEW SECTION Sec.20 Procurement Management – Section 1(d) and Subsection 3:**  ***1(d). Incorporation of performance measurers and measurable benchmarks in contracts;***  ***3. To the extent practicable, agencies should enter into performance-based contracts . . . identify expected deliverables and performance measures or outcomes . . . use appropriate techniques-consequences or incentives or both-to ensure agreed upon value is received. Payment should be contingent on contractor achieving performance outcomes.*** | | **Primary Recommendation**  **Adopt consistent performance based (PBC) contracting standards for agencies to incorporate performance measures and measurable benchmarks, as set forth in, and consistent with based on Executive Order** [10-07](http://www.governor.wa.gov/execorders/eo_10-07.pdf), **existing SAAM 15.40.20 guidelines and considering SAO’s 2011 review, including how applies to purchase orders.**  **Include exemption process where it doesn’t make sense to require PBC, as per Executive Order** [10-07](http://www.governor.wa.gov/execorders/eo_10-07.pdf) **and SAAM:**  *In those cases where it is not cost effective for the state to use a performance-based contract, a cabinet agency may exempt a contract from the requirement to include deliverables, performance measures and/or outcomes. All exemptions must be approved in writing by the agency director before the agency enters into the contract.*  **Agencies (or DES for master/other state contracts), shall be responsible for including in its contracts deliverables, performance measures/outcomes and measurable benchmarks that are clearly written, specific, measurable, attainable/achievable, realistic and time-based, detailing how the agency will determine when contractor has successfully completed performance, and when and how much the contractor should be paid for each successful milestone completion. Include penalties for non-performance/non-compliance, and incentives when feasible. Include defined change management process to aid in necessary timeline, specification, scope or other revisions.**  **Agency central purchasing/finance or other headquarters contract manager/author/ administrator shall be engaged in contract performance monitoring and payment review/approval, providing key contract information and requirements to end-users, project managers and vendors to improve awareness, monitoring and compliance.**  **Agency end users/project managers shall increase performance issue documentation, use of vendor report card/feedback systems, and utilization of documented, formal cure process for improved issue resolution for poor performance.**  **DES to provide training to end-users, project managers and central purchasing staff, as well as guidance and master/other contracting support, as applicable.** | | **References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)**   * ***State Auditor’s report on Performance Based Contracting, including Risk Assessment and Monitoring Plan (RAMP) approach (see executive summary pa 6 and Options and Recommendations section pa 39):***   <http://www.sao.wa.gov/auditreports/auditreportfiles/ar1004877.pdf>   * ***Performance Based Contracting Executive Order***: * ***OSP’s proactive Contractor Performance Feedback Survey tool:***  [**http://gaapoly01/ContractEval/createPerformanceSCR1.aspx**](http://gaapoly01/ContractEval/createPerformanceSCR1.aspx) * ***OFM SAAM 15.40.20 Guidelines***:   At a minimum, performance-based contracts must identify expected deliverables, performance measures or outcomes; and payment is contingent on their successful delivery. Performance-based contracts also use appropriate techniques, which may include but are not limited to, consequences and/or incentives to ensure that agreed upon value to the state is received.  Performance-based contracts:   * Emphasize results related to output, quality and outcomes rather than how the work is performed; * Specify deliverables, performance standards and/or an outcome orientation and clearly defined objectives and timeframes; * Use quality assurance plans, measurable performance standards and/or outcomes; * Provide performance incentives and/or consequences for non-performance; and * Tie payment to deliverables, performance measures and/or outcomes.   Performance-based contracting must be carefully considered since deliverables, performance measures and/or outcomes need to be clearly identified in the contract, so that achievement of those deliverables, performance measures and/or outcomes is apparent to all.  **Benchmarking** is the process of comparing one's business processes and [performance metrics](http://en.wikipedia.org/wiki/Performance_metric) to industry bests or [best practices](http://en.wikipedia.org/wiki/Best_practice) from other industries. Dimensions typically measured are quality, time and cost. In the process of benchmarking, management identifies the best firms in their industry, or in another industry where similar processes exist, and compare the results and processes of those studied (the "targets") to one's own results and processes. [*Wikipedia*](http://en.wikipedia.org/wiki/Benchmarking) Procedure There is no single benchmarking process that has been universally adopted. The wide appeal and acceptance of benchmarking has led to the emergence of various benchmarking methodologies. Robert Camp (who wrote one of the earliest books on benchmarking in 1989)[[4]](http://en.wikipedia.org/wiki/Benchmarking#cite_note-3) developed a 12-stage approach to benchmarking.  **The 12 stage methodology consists of**:   1. Select subject 2. Define the process 3. Identify potential partners 4. Identify data sources 5. Collect data and select partners 6. Determine the gap 7. Establish process differences 8. Target future performance 9. Communicate 10. Adjust goal 11. Implement 12. Review and recalibrate   The following is an example of a typical benchmarking methodology:   1. **Identify problem areas** - Because benchmarking can be applied to any business process or function, a range of research techniques may be required. They include: informal conversations with customers, employees, or suppliers; [exploratory research](http://en.wikipedia.org/wiki/Qualitative_marketing_research) techniques such as [focus groups](http://en.wikipedia.org/wiki/Focus_group); or in-depth [marketing research](http://en.wikipedia.org/wiki/Marketing_research), [quantitative research](http://en.wikipedia.org/wiki/Quantitative_marketing_research), [surveys](http://en.wikipedia.org/wiki/Statistical_survey), [questionnaires](http://en.wikipedia.org/wiki/Questionnaire_construction), re-engineering analysis, process mapping, quality control variance reports, financial ratio analysis, or simply reviewing cycle times or other performance indicators. Before embarking on comparison with other organizations it is essential to know the organization's function and processes; base lining performance provides a point against which improvement effort can be measured. 2. **Identify other industries that have similar processes** - For instance if one were interested in improving hand offs in addiction treatment one would try to identify other fields that also have hand off challenges. These could include air traffic control, cell phone switching between towers, transfer of patients from surgery to recovery rooms. 3. **Identify organizations that are leaders in these areas** - Look for the very best in any industry and in any country. Consult customers, suppliers, financial analysts, trade associations, and magazines to determine which companies are worthy of study. 4. **Survey companies for measures and practices** - Companies target specific business processes using detailed surveys of measures and practices used to identify business process alternatives and leading companies. Surveys are typically masked to protect confidential data by neutral associations and consultants. 5. **Visit the "best practice" companies to identify leading edge practices** - Companies typically agree to mutually exchange information beneficial to all parties in a benchmarking group and share the results within the group. 6. **Implement new and improved business practices** - Take the leading edge practices and develop implementation plans which include identification of specific opportunities, funding the project and selling the ideas to the organization for the purpose of gaining demonstrated value from the process. | | **Assumptions / Pre-requisites / Dependencies:**  Assumes defined deliverables, performance measures and outcomes can be developed and included by the agency (or DES, respectively) that are specific and applicable to each contract:   * Define the standards for measuring contractor performance * Provide a means to monitor performance * Measure satisfaction with the contractor * Provide data for program evaluation   Assumes training can be provided on performance monitoring/deliverable/payment review and approval, issue documentation, benchmarking, and writing good performance measures and outcomes that are:   * Clearly written and easily understood by contractors, state agencies, and vendors * Focused on the performance expected from the contractor * Well defined and consider both the quantitative and qualitative aspects of performance * Relevant, timely, verifiable and reportable * Realistic in terms of available resources, funding and timelines, and recognize external factors beyond the control of the system   Assumes agency contract managers, central purchasing contracting staff have the capacity to guide, advise, review, monitor and make end-users/project managers and vendors aware of contract terms, deliverables, performance measures and outcomes as mandated and consider:   * How the agency will know the service has actually been provided * How the agency will know the *quality* of services has been provided and include a mechanism for measuring quality * What specific deliverables, performance measures or outcomes the agency is looking for * Whether payment is contingent on an event, product, or outcome. If so, how the agency will ascertain that the contractor has satisfied the requirement.   Dependent upon end users regularly documenting and submitting all performance concerns to Agency contracting staff (and DES for master/single agency contracts) so that appropriate action can be taken, which relies upon proper and consistent documenting of issues | | **Discussion of anticipated benefits:**   * Improved accountability * Keeps contact manager/author in the loop throughout contract term * Strengthen agencies contract monitoring and management practice * Provides impartial, contract-knowledgeable party to assist with improved performance monitoring, contract compliance, and issue resolution * Adds defined change management process * Result in better prices and performance * Encourage contractors to work to deliver effective, timely, quality goods and services * Shift more risk to contractors so they are responsible for achieving the outcomes * Provide incentives to improve contractor performance and tie compensation to achievement | | **Discussion of anticipated concerns:**   * Availability of adequate agency resources – lack of contract manager time/capacity to provide additional oversight * Project manager/end-user concern relinquishing portion of oversight/monitoring/approval * Agency concern over exemption process requirements | | **List of alternate approaches:**   * Continue with current methods without additional training or monitoring | | Check which ever applies below:  I do not support this recommendation.  3 I support this recommendation as is.  I support this recommendation with the Suggested Changes below. | | Please insert Suggested Changes here: | |

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| Procurement Reform Management Guidelines Work Group  Pre-contract Procedures Recommendation |
| |  | | --- | | **2SHB2452 Reference for Recommendation: Sections 20(1)(a).**  **The department must adopt uniform policies and procedures for the effective and efficient management of contracts by all state agencies. The policies and procedures, must, at a minimum, include: (1)(a) Precontract procedures for selecting potential contractors based on their qualifications and ability to perform.** | | Primary Recommendations  ***For competition exempt procurement processes (including direct buy, emergency, client services, etc.):***  Require agencies to evaluate potential contractor’s basic qualifications and determine reasonableness of proposed price whenever an acquisition is not being competitively procured. Determinations on basic qualifications and reasonableness of price may be determined by such factors as direct experience with contractor, availability of contractor, research, checking references, informal price comparison, purchase of goods or services at retail, reasonableness of vendor’s contract etc.  ***[Sole source procedures to be determined by sole source workgroup.]***  ***For competitive procurements:***  When deemed feasible (based on agency’s available resources, time constraints and potential size of vendor pool), agencies should generally make procurements **open** to all who meet the basic minimum qualifications.    When an open process is determined not to be feasible, agencies may conduct **invitational** competitive processes. Invitational competitive processes should require invitation of a **minimum of three** vendors/providers who have been pre-screened based on preliminary evaluation of qualifications similar to that done for competition exempt acquisitions (determine best-qualified based on research, direct past experience, reputation, checking references, price comparison, etc.). All invitational competitive processes and documents should still be posted on WEBS (similar to sole-source advertisements) to ensure transparency of process.  ***For all***:  Require initial screening against state-level debarred contractors list.  Require consideration of whether WTO GPA compliance is required for acquisition.  DES should provide guidance on appropriate basic risk assessment process at the pre-contract stage.  DES to provide guidance to ensure consideration of and opportunities for small, micro, mini businesses, Veteran-owned businesses, and Minority- and Women-Owned Business enterprises. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.) | | Assumptions / Pre-requisites / Dependencies:  Availability of basic information on potential contractor’s reputation, qualifications, prices, etc. | | Discussion of anticipated benefits: | | Discussion of anticipated concerns:  Lack of available information  For open competitions, possible that agencies will receive multiple proposals from unqualified vendors. Even if such vendors are screened out, there could be a substantial potential increase in workload associated with screening and dealing with such responses. | | List of alternate approaches: | | Check which ever applies below:  1 I do not support this recommendation.  5 I support this recommendation as is.  I support this recommendation with the Suggested Changes below. | | Please insert Suggested Changes here: | |

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| Procurement Management Guidelines  Contractor Requirements To Provide Data Recommendation |
| |  | | --- | | **2SHB2452 Reference for Recommendation: Sections 20(2) and (5), which incorporates language from current RCW 39.29.080.** | | Primary Recommendation  Include in model contracts language that reflects this requirement and applies it to contractors. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)  This is current practice for many agencies under RCW 39.29.080. | | Assumptions / Pre-requisites / Dependencies: | | Discussion of anticipated benefits: | | Discussion of anticipated concerns: | | List of alternate approaches: | | Check which ever applies below:  I do not support this recommendation.  3 I support this recommendation as is.  2 I support this recommendation with the Suggested Changes below. | | Please insert Suggested Changes here:  Contractor to provide data at no cost.  There needs to be more than one version of this clause. For current personal service contracts this clause can be quite contentious given vendors concerns about proprietary nature of the data and analysis they are providing. For other vendors this is a non-issue. | |

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| Procurement Management Guidelines Work Group  Contract Terminations Recommendation |
| |  | | --- | | **2SHB2452 Reference for Recommendation: NEW SECTION Sec.20 Procurement Management. (1) The department must adopt uniform policies and procedures for the effective and efficient management of contracts by all state agencies. The policies and procedures must, at a minimum, include: … (i) procedures and criteria for terminating contracts for cause or otherwise….** | | Primary Recommendation  DES should include in policy a requirement that agencies address various reasons for contract termination in the contract as well as procedures for termination. Agencies should consider including termination for default criteria and process, termination for lack of funding, termination for contractor conflict of interest, and termination for convenience.  Contractors should be notified in writing of any termination prior to the contract’s natural end date.  Prior to terminating a contract for breach or default, agencies should ensure they have sufficient documented evidence to support the termination according to the contracts terms. If contract terms include a “cure” provision, agencies should include documentation that such process has been followed.  Agencies should assess possible reasons for termination as part of the contract’s risk assessment and ensure that appropriate termination language is negotiated and included in the contract up front.  It is recommended that DES include in guidelines some discussion of appropriate use of *termination for convenience* clauses. For example, if the contractor has materially breached the terms of the contract or failed to perform, termination for default is the appropriate form of termination; termination for convenience should not be relied upon instead merely because staff find it easier than documenting the breach or performance problem. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)  Current model contracts have a variety of termination clauses, including termination for default, termination for lack of funding or non-appropriation of funds, termination for conflict of interest, termination for convenience. | | Assumptions / Pre-requisites / Dependencies:  Agencies will need to understand and assess termination risks prior to negotiation. | | Discussion of anticipated benefits: | | Discussion of anticipated concerns:   |  | | --- | | At least one workgroup member is concerned that requiring termination for default in *all* instances of default is going too far. There may be instances of “actual default” which are not attributable to any actual breach, misfeasance or nonfeasance. For instance, a contractor may have been selected for contract award primarily because of the talent of one key individual at the firm and the contract calls for that person to be assigned to the work done for the agency. That key individual chooses to leave the firm, likely for greener pastures, but for whatever reason. The contractor, not able any longer to assign that person to the contracted-for work, is thus in default.  Also, there are some industries where having a contract “terminated for default” is extremely injurious to the contractor’s reputation and negatively could affect that firm’s ability to secure future work should future procurements ask them to describe any prior “terminations for default.”  I believe agencies should retain the right to terminate for convenience based upon the agency’s reasonable exercise of their discretionary judgment and wisdom. Document the file, yes but allow the termination to be less onerous. | | | List of alternate approaches: | | Check which ever applies below:  1 I do not support this recommendation.  5 I support this recommendation as is.  1 I support this recommendation with the Suggested Changes below. | | Please insert Suggested Changes here: | |

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| Procurement Management Guidelines Work Group  Advisory Committee Question Response |
| Section 10(2) – Develop policies and standards for the use of credit cards or similar methods of payment?   * What payment methods should be included in the policy/standard? * What factors should be taken into consideration when these payment methods are used?   Workgroup response: Although this was not an area we were asked to submit recommendations on or look into before the workgroup suggests this issue is approached similar to our recommendation on other issues within our area of responsibility which is to allow flexibility in the policies based on a risk assessment done a the agency level. We propose there be options to use all secure transaction methods.  Section 13 – Competitive Solicitation  How do you define competitive solicitation? What factors must be present in order for a solicitation to be considered competitive?  Workgroup response:  Competitive solicitation is defined in the 2SHB2452 as follows:  “Competitive solicitation” means a documented formal process providing an equal and open opportunity to bidders and culminating in a selection based on predetermined criteria.”  Thus required factors would include:   1. Defined process 2. Documentation of the process 3. Process is “equal and open” 4. More than one bidder must have an opportunity to bid (though possibly *all* interested bidders must have the opportunity for truly “open” process) 5. Initial selection is based on predetermined criteria.   Implied factors would include:   1. Advertising and/or posting the opportunity someplace where all may see (open) 2. Information available to bidders and process followed is the same for all of them (equal) 3. Bidders will know in advance what the selection criteria are.   Section 13 – Amendments subject to competitive solicitation requirement  If amendment “substantially” changes the scope of work of original contract or “substantially” increases the value of the original contract, it must be put out to bid. Define “substantially”, what does that include and what factors should be considered when DES makes that determination?  Workgroup response:  Determining how “substantial” an amendment is requires the application of judgment on a case by case basis and an analysis of how the proposed changes compare with the original scope of work. There is more than one factor that could be measured in such an analysis and no one factor may be definitive on its own. Factors compared could include time for performance/delivery, quantity of product, number of deliverables, value of contract, etc.  Members of the group have suggested several alternatives. One is to consider an amendment “substantial” if more than one of the factors above (contract value, quantity of products, etc.) is increased by a factor of 50% or more. Another alternative would be that a “substantial” amendment is defined as one not reasonably related to the foreseeable outcome of the project at the time of the initial execution. Some in the group have concerns that this second alternative is not definitive enough. For instance, it would be difficult to apply “foreseeability” to information technology services and equipment.  Performance Based Contracts – Section 20(3) When would you not use a performance based contract? If someone asked you what needs to be included in a contract for it to be performance based, what advice or guidance would you provide?  Workgroup response:  The workgroup believes the [guidance originally published by OFM](http://www.ofm.wa.gov/contracts/resources/performance_based/default.asp) on performance based contracting provides an excellent resource on performance-based contracts, including when you might *not* use one, as well as what needs to be included to make a contract performance-based. This guidance essentially states that to be considered a performance-based contract, an agreement must, at minimum, identify the expected deliverables under the contract and make payment contingent upon successful delivery of the goods or services. For services this assumes that at the time of entering into the contract the solution can be well defined.  The State Auditor’s Office has also published suggestions on improving [Performance-Based Contracting](http://www.sao.wa.gov/auditreports/auditreportfiles/ar1004877.pdf) across the state by including incentives for good performance, consequences for poor performance (other than contract termination for breach or nonperformance), and tying payment to outcomes and performance measures rather than “just” deliverables. This report also includes examples of when performance-based contracting might not be a good idea.  Instances where you would not necessarily use a performance-based contract include those contracts where the state is being paid to provide services, memoranda of understanding and other types of agreements that set out roles and responsibilities but do not include any payment obligations, federally funded contracts that must be done as cost-reimbursement, software licenses, master contracts that are primarily managed by DES, and any other instance where it is not cost-effective.  Contract Amendments – section 20(g) When can you amend a contract as opposed to going out for a new procurement? What factors should be considered? How do you make that determination?  Workgroup response:  Factors that should be considered in determining whether it is appropriate to amend an existing contract versus conduct a new procurement are:   * Current market conditions * Contractor price increases * Substantial additions to the scope of work * Contractor’s performance history * Cost of transition to a new contractor, time and dollars required to transition. * How many times has the contract been extended already? How many years has the contract been in place altogether?   There should be no barriers to amending a contract to update administrative items (e.g., contact information), correct errors, reallocate dollars or budget within the original limits or make minor adjustments within the original scope of the contract. Mere time extensions that extend the period of performance without implicating additional spend should not require a new procurement. Fungible goods may require new procurements more often than complex professional services. When an amendment would add substantially to the scope of work or the value of the contract (as described above for sole source amendments), or add goods that could be as easily acquired or services that could be as easily accomplished *independently* of the original contract as in connection with it, then staff should consider going out for a new procurement rather than amending an existing contract. A decision not to go out for a new procurement under such circumstances should require justification and approval at a staff level to be determined by each agency.  The solicitation document should specify the length of the contract to be awarded and any renewal periods that will be considered. Contracts should not be extended beyond the period specified in the original solicitation document without justification.  Model Contracts – Section 20(1)(e) Should there be different model contracts for different types of goods and services? What terms should be included in all contracts? What terms should be included in different contracts and what factors do you consider in deciding whether to include the term?  Workgroup response:  Yes, there should be different types of model contracts available for different types of goods and services. Types of model contracts should include:   * Purchase Orders * Goods * Equipment * Services * Software * IT Services (which should probably be broken down further into types like maintenance & support, development, etc.) * IT goods * Client Services * Interlocal / interagency agreements * Data Sharing agreements   Terms that should be *considered* for inclusion but which may not necessarily be appropriate in *all* contracts are:  Period of performance, purpose, consideration, billing and payment, insurance requirements, dispute resolution, governing law & venue, definitions, amendment, assignment, confidentiality, independent contractor status, provision for maintenance of records, audit and inspection, severability, surviving terms, termination clauses, waiver, options for extension, breach and opportunity to cure periods, performance expectations, IT- license rights, intellectual property indemnification, data protection, privacy and security breach clauses, warranties, work product ownership.  Model contracts already exist for several of the types listed above. They should be reviewed and revised for consistency with notes on how and when to use certain options and terms (see [OCIO model contract for Software](http://www.ofm.wa.gov/ocio/policies/documents/206R.doc) for an example). Listing out factors to be considered here would be too lengthy an exercise for this group but should be done by folks with experience in negotiating such terms with contractors and reviewed by attorneys.  Agencies should have the discretion and the corresponding responsibility to employ contract terms best suited to the nature of the contracted services and/or goods and which are consistent with the agency business model. The essential elements of a contract must be set forth, *e.g.,* offer and acceptance; capacity to contract; consideration to support the contract; mutual identity of consent (meeting of the minds); legality of contract purpose; and sufficient certainty of terms, meaning an absence of ambiguity.  Precontract procedures – Section 20(1)(a) What procedures can and should an agency undertake prior to starting a procurement or deciding whether to enter into a procurement process? What guidance would you provide in regards to market research, discussions with vendors, etc.  Workgroup response:  One workgroup member commented that it is not clear whether this question is asking about “pre-contract procedures” under Section 20 of Chapter 224, Laws of 2012, which would seem to be the procurement process itself, or whether this question is asking about “pre-procurement” processes distinct from the procurement process itself.  In any event, the answer to this question must ultimately depend on what DES’s written policies require about when a procurement must be run, what the direct buy threshold will be, and what the sole source requirements and justifications will require. Obviously, an agency will need to do an initial analysis of its requirements and perform enough market research to determine expected costs and whether or not there is more than one vendor capable of providing the goods or services.  Agencies should be judicious in engaging in discussions with possible vendors and not make any commitments or promises regarding what course the agency will take. Agencies should be sure to inform vendors that there are procurement laws they must follow. Agencies should ensure they cease any informal discussions with possible vendors once a procurement document is released. Agencies may wish to conduct a risk assessment for the procurement process also.  Where results of informal contractor or product research are insufficient, more formal processes such as a Request for Information (RFI) or Request for Expression of Interest (RFEI) may be used if warranted, taking into consideration the time and effort required to conduct them.  A response to RFI or RFEI cannot be used to pre-qualify a potential vendor and must not influence the chances of the vendors responding to such information searches from becoming the successful proponent in any subsequent procurement opportunity.  Another tool to consider could be a Request for Qualification (RFQ) which would enable an agency to gather information about potential contractors’ capabilities and qualifications in order to pre-qualify respondents for an immediate product or service need or to identify qualified candidates in advance of expected future competitions.  Terms and conditions of the RFQ document must contain language that disclaims any obligation of the agency to call on any vendor to provide goods or services as a result of this pre-qualification. |

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| Miscellaneous Issues Work Group  Bonding Recommendation |
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| Miscellaneous Issues Work Group  Emergency Purchases Recommendation |
| |  | | --- | | **2SHB2452 Reference for Recommendation:**  **“Section 14-Competitive solicitation – Exceptions. All contracts must be entered into pursuant to competitive solicitation, except for:**  **(1) Emergency Contract;”**  **“Section 15-Emergency Purchases - (1) An agency may make emergency purchases as defined in subsection (3) of this section. When an emergency purchase is made, the agency head shall submit written notification of the Purchase within three business days of the purchase to the director. This notification must contain a description of the purchase, a description of the emergency and the circumstances leading up to the emergency, and an explanation of why the circumstances required an emergency purchase.**  **(2) Emergency contracts must be submitted to the department and made available for public inspection within three working days following the commencement of work or execution of the contract, whichever occurs first.**  **(3) As used in this section, “emergency” means a set of unforeseen circumstance beyond the control of the agency that wither: (a) Present a real, immediate, and extreme threat to the proper performance of essential functions; or (b) May reasonably be expected to result in material loss or damage to property, bodily injury, or loss of life, if immediate action is not taken.** | | Primary Recommendation   * Emergency purchasing/contracting be permitted for emergencies that are consistent with the definition * Services should be for a limited to the emergency and/or immediate emergency response requirements until normal purchasing/contracting processes can resume * Authorize the use of contractors/purchases outside the approved providers list if the emergency response cannot be met by the current authorized contracting resources | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)   * Idaho authorizes and regulates emergency purchases for public works contracting and open market purchases for immediate delivery. * Oregon authorizes emergency purchases, but it appears that each division has their own rules.   + Children, Adults and Family services: Limits to a period of 90 days for services and limit of $15,000.   + Parks and Recreation Department: Limits to $5,000 and places additional requirements, provide a written report. The other contract limit is $150,000 with additional requirements. * California authorizes and regulated emergency public contracting and exempts the bid processes, and requires governing body review and vote on the emergency action within 14 days. | | Assumptions / Pre-requisites / Dependencies:  **Assumption/Pre-requisites:**   * The definition of “emergency” must be met in order to utilize this exemption. * The prequalified contractors cannot meet the emergency contracting/purchase requirements. * Ethics restrictions and debarment orders will not be waived   **Dependencies:**   * The normal contracting processes and resources cannot provide the immediate services or products to respond to the emergency. * Agency Director or designee must authorize the purchase/contract. * Emergency purchase contracts are subject to contracting disclosure rules for public inspection. | | Discussion of anticipated benefits:  The benefit of permitting emergency purchases and contracting allows government organizations to respond in the fasted manner to preserve property, prevent harm, and/or reduce the negative impact of the emergency event. | | Discussion of anticipated concerns:  The risk of permitting emergency purchases is that this mechanism provides an opportunity for questionable purchasing practices if this process is not appropriately monitored.  Lack of emergency purchases may delay response to support organizational or public needs during an emergency event. | | List of alternate approaches:  1. Prohibiting any purchasing/contracting that does not comply with all the contracting processes.  2. Allow emergency purchasing without restrictions or limits, and only require reporting for the purchase/contract after the emergency event. | |

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| Miscellaneous Issues Work Group  Cooperative Purchasing Recommendation |
| |  | | --- | | **2SHB2452 Reference for Recommendation:**  **“Section 14-Competitive solicitation – Exceptions. All contracts must be entered into pursuant to competitive solicitation, except for:**  **(1) Emergency Contract;”**  **“Section 15-Emergency Purchases - (1) An agency may make emergency purchases as defined in subsection (3) of this section. When an emergency purchase is made, the agency head shall submit written notification of the Purchase within three business days of the purchase to the director. This notification must contain a description of the purchase, a description of the emergency and the circumstances leading up to the emergency, and an explanation of why the circumstances required an emergency purchase.**  **(2) Emergency contracts must be submitted to the department and made available for public inspection within three working days following the commencement of work or execution of the contract, whichever occurs first.**  **(3) As used in this section, “emergency” means a set of unforeseen circumstance beyond the control of the agency that wither: (a) Present a real, immediate, and extreme threat to the proper performance of essential functions; or (b) May reasonably be expected to result in material loss or damage to property, bodily injury, or loss of life, if immediate action is not taken.** | | Primary Recommendation   * Emergency purchasing/contracting be permitted for emergencies that are consistent with the definition * Services should be for a limited to the emergency and/or immediate emergency response requirements until normal purchasing/contracting processes can resume * Authorize the use of contractors/purchases outside the approved providers list if the emergency response cannot be met by the current authorized contracting resources | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)   * Idaho authorizes and regulates emergency purchases for public works contracting and open market purchases for immediate delivery. * Oregon authorizes emergency purchases, but it appears that each division has their own rules.   + Children, Adults and Family services: Limits to a period of 90 days for services and limit of $15,000.   + Parks and Recreation Department: Limits to $5,000 and places additional requirements, provide a written report. The other contract limit is $150,000 with additional requirements. * California authorizes and regulated emergency public contracting and exempts the bid processes, and requires governing body review and vote on the emergency action within 14 days. | | Assumptions / Pre-requisites / Dependencies:  **Assumption/Pre-requisites:**   * The definition of “emergency” must be met in order to utilize this exemption. * The prequalified contractors cannot meet the emergency contracting/purchase requirements. * Ethics restrictions and debarment orders will not be waived   **Dependencies:**   * The normal contracting processes and resources cannot provide the immediate services or products to respond to the emergency. * Agency Director or designee must authorize the purchase/contract. * Emergency purchase contracts are subject to contracting disclosure rules for public inspection. | | Discussion of anticipated benefits:  The benefit of permitting emergency purchases and contracting allows government organizations to respond in the fasted manner to preserve property, prevent harm, and/or reduce the negative impact of the emergency event. | | Discussion of anticipated concerns:  The risk of permitting emergency purchases is that this mechanism provides an opportunity for questionable purchasing practices if this process is not appropriately monitored.  Lack of emergency purchases may delay response to support organizational or public needs during an emergency event. | | List of alternate approaches:  1. Prohibiting any purchasing/contracting that does not comply with all the contracting processes.  2. Allow emergency purchasing without restrictions or limits, and only require reporting for the purchase/contract after the emergency event. | |

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| Miscellaneous Issues Work Group  Direct Buy Recommendation |
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| Miscellaneous Issues Work Group  Convenience Contract Recommendation |
| |  | | --- | | **2SHB2452 Reference for Recommendation: NEW SECTION. Sec 8, CONVENIENCE CONTRACT** | | Primary Recommendation :  Make delegations to agencies under what criteria they will be authorized to enter into convenience contracts vs. master contracts.  Designate convenience contracts as mandatory or non-mandatory use.  Include a “Best Buy” clause  Establish minimum threshold for required contracting tied in with delegated authority.  Section 8 states “…may only be used as specified by the department” Clarify under what criteria and if the authorization needs to specifically be in the contract or can be made later.  Section 8 defines a convenience contract as being “…solicited and established by the department…” Clarify if that extends to contracts established by other agencies based on DES authority. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)  California State contracting Manual  Texas, Window on state government website. | | Assumptions / Pre-requisites / Dependencies:  Assumes  DES delegates contracting authority to individual agencies at some level. | | Discussion of anticipated benefits:  Flexibility in timeliness for state contracting for goods and services.  Agency unique expertise and needs are retained in the contract process.  Higher levels of purchasing power result in reduced costs to agencies.  Retains flexibility to support small businesses. | | Discussion of anticipated concerns:  Scope conflict with other regulations  Conflict with other work group recommendations.  Section 8 may be unnecessary. Could have achieved same result thru limited use master contract.  “Convenience” description is confusing. Historically “convenience use” (non mandatory) contracts existed so the term implies a different meaning than in bill. | | List of alternate approaches:  DES enters into all contracts on behalf of agencies. | |

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| Miscellaneous Issues Work Group  Ethics Recommendation |
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ETHICS IN PUBLIC CONTRACTING.**  **(1)(a) A state officer or employee of an agency who seeks to acquire goods or services or who participates in those contractual matters is subject to the requirements in RCW 42.52.150.**  **(b) A contractor who contracts with an agency to perform services related to the acquisition of goods and services for or on behalf of the state is subject to the requirements in RCW 42.52.150.**  **(2) No person or entity who seeks or may seek a contract with a state agency may give, loan, transfer, or deliver to any person something of economic value for which receipt of such item would cause a state officer or employee to be in a violation of RCW 42.52.040, 42.52.110, 42.52.120, 42.52.140, or 42.52.150.** | | **Primary Recommendation**  Since the inception of the Ethics in Public Service Act, RCW 42.52.170 has contained the prohibition “No person or entity who seeks or may seek a contract with a state agency may give, loan, transfer, or deliver to any person something of economic value for which receipt of such item would cause a state officer or employee to be in a violation of RCW 42.52.040, 42.52.110, 42.52.120, 42.52.140, or 42.52.150.”  To our knowledge, Executive Ethics Board has never prosecuted a case under this section.  No change needed. If DES becomes aware of facts that cause them to believe that someone had violated this section, then the issue should be submitted to the Ethics Board under RCW 42.52.170 and let the Board handle it rather than try to do anything under the procurement reform law.  **Secondary Recommendation**  In the development of Training courses based on Procurement Reform, develop a set of Guiding Principles that would include the following elements: 1) Professional Behavior; 2) Code of Conduct/Ethics (refer to examples outlined at the end of this document); 3) Transparency; 4) Emphasis for an open, fair, competitive process, etc.  The Guiding Principles should also be included in the Washington Purchasing Manual (or the guide that is developed by DES).  The Guiding Principles should include the following:   * Procedures designed to detect and prevent the circumvention of procurement laws and rules. * Policy covering association and relationships between government purchasers and contractors/vendors. * Procedure that requires government employees who serve on committees or otherwise participate in the evaluation of solicitations sign a written confidentiality and conflict of interest declaration.   Additional consequences if Ethics are violated:  If a contract manager or procurement officer violated one of the Codes of Conduct/Ethics they could have their certification revoked. If the agency ends up with ?? percent of staff losing their certification, the agency could be in jeopardy of losing their delegated purchasing authority. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)  **Primary Recommendation**  N/A  **Secondary Recommendation**  NASPO State & Local Government Procurement Guide, Chapter 15 | | Assumptions / Pre-requisites / Dependencies:  **Primary Recommendation**  N/A  **Secondary Recommendation**  Based on years of contracting and running procurements in various agencies, there are always individuals that like to circumvent the rules or ask for forgiveness later on when they have procured a contract with a vendor without following the proper protocols | | Discussion of anticipated benefits:  **Primary Recommendation**  N/A  **Secondary Recommendation**  By developing a Code of Conduct/Ethics for procurement staff, contract managers, etc. we would reduce the risk of audit findings, protests on procurements, etc. | | Discussion of anticipated concerns:  **Primary Recommendation**  N/A  **Secondary Recommendation**  Staff that do not follow the rules around procurement and contracting put the agency at risk for a lawsuit, protest, losing the agencies delegated purchasing authority.  Example: Vendor is doing work without a contract in place; agency consistently selecting the same vendor for every project that was bid on. | | List of alternate approaches:  **Primary Recommendation**  N/A  **Secondary Recommendation** |   Code of Conduct Examples:   * Institute of Supply Management: <http://www.ism.ws/files/SR/PrinciplesandStandardsGuidelines.pdf> * National Institute of Governmental Purchasing (NIGP): <http://www.nigp.org/eweb/docs/ethics/NIGPCodeofEthics.pdf> * National Association of State Procurement Officials (NASPO) State & Local Government Procurement Guide, Chapter 15: <http://www.naspo.org/userfiles/file/2008%20NASPO%20State%20&%20Local%20Procurement%20Guide.pdf> * American Bar Association, Model Procurement Code, Article 12: [\\Gapsoly02\Home\cwarnoc\Procurement Reform\Procurement Reform Bill\Miscellaneous Workgroup\ABA 2000 Model Procurement Code Article 12 Ethics.docx](file://Gapsoly02/Home/cwarnoc/Procurement%20Reform/Procurement%20Reform%20Bill/Miscellaneous%20Workgroup/ABA%202000%20Model%20Procurement%20Code%20Article%2012%20Ethics.docx) |

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| Miscellaneous Issues Work Group  Master Contracts Recommendation |
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(1) In addition to the powers and duties provided in chapter 43.19 RCW, the department shall make available goods and services to support state agencies, and may enter into agreements with any other local or federal governmental agency or entity or a public benefit nonprofit organization, in compliance with RCW 39.34.055, and any tribes located in the state, to furnish such products and services as deemed appropriate by both parties.**  **(2) The department shall ensure full cost recovery from state agencies, other local or federal governmental agency or entity, public benefit nonprofit organizations, or any tribes located in the state, for activities performed pursuant to subsection (1) of this section. Cost recovery must ensure that the department is reimbursed its full cost for providing the goods and services furnished as determined by the department. Cost recovery may be collected through the state agency, other governmental entity, nonprofit organization, or through the contractor.**  **(3) All governmental entities of this state may enter into agreements under this section with the department, unless otherwise prohibited;**  **New section 7, COOPERATIVE PURCHASING AUTHORIZED. (1) On behalf of the state, the department may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any goods or services with one or more states, state agencies, local governments, local government agencies, federal agencies, or tribes located in the state, in accordance with an agreement entered into between the participants. The cooperative purchasing may include, but is not limited to, joint or multiparty contracts between the entities, and master contracts or convenience contracts that are made available to other public agencies. (2) All cooperative purchasing conducted under this chapter must be through contracts awarded through a competitive solicitation process.**  **New section 9.(3), The director or designee is the sole authority to enter into master contracts on behalf of the state; and**  **New Section 14.(5). COMPETITIVE SOLICITATION--EXCEPTIONS. All contracts must be entered into pursuant to competitive solicitation, except for:**  **(1) Emergency contracts;**  **(2) Sole source contracts that comply with the provisions of section 16 of this act;**  **(3) Direct buy purchases, as designated by the director. The director shall establish policies to define criteria for direct buy purchases. These criteria may be adjusted to accommodate special market conditions and to promote market diversity for the benefit of the citizens of the state of Washington;**  **(4) Purchases involving special facilities, services, or market conditions, in which instances of direct negotiation is in the best interest of the state;**  **(5) Purchases from master contracts established by the department or an agency authorized by the department;**  **(6)…..** | | Primary Recommendations:  Master contracts would be developed by DES for goods and services commonly used by state agencies. These master contracts would include the following areas that currently exist:   * information technology good and services * personal services * purchased goods and services   The authority to develop a master contract could be delegated to an agency in coordination with DES if of benefit to the state as a whole.  The current staff involved in the various “master contracts” should meet and discuss best practices and provide that body of knowledge to the policy group.  General guidance should be developed that includes the following:   1. Determining when there should be a master contract which would include criteria such as  * Repetitive purchase by more than one agency or entity * Statewide general use (specifications/requirements can be used by most) * Annual dollar value over $X amount (current rule of thumb is $50,000) * DES should add value to the process (i.e. leveraging the state requirements and doing the competitive process on behalf of the state – so state agencies don’t have to duplicate efforts, etc.) * Is the market/industry open/conducive to a statewide master contract? * Is there a competitive environment? * Socioeconomic considerations  1. Master contracts should use the best value award criteria in section 18 of the procurement reform bill. 2. Criteria for type of contract to utilize, i.e., single award, multiple award, 2nd tier awards. 3. For those master contracts that allow a 2nd tier process, there should be guidance on including a quarterly or semi -annual “refresh” process to add new vendors. The 2nd tier process should be efficient with minimal requirements and paperwork. Where possible, a list of “prequalified” vendors would be utilized and the 2nd tier process eliminated. 4. Master contracts would be used by all agencies (excluding exemptions in the law) except when an agency can justify that the master contract cannot satisfy the need. An online form would be available to provide the justification and would alert the contract administrator of the exception. This information would be used to determine whether any action needed to be taken on the contract to be able to meet the need. 5. Contract extension and rebid decisions should use the performance feedback and the agency justified exceptions to inform those decisions. 6. DES would have the flexibility to determine contract length with consideration of implementation costs, training, market factors, etc. (e.g., e-procurement system, p-card provider, software such as Microsoft Office.) 7. Vendors would pay a percentage based on the business they receive off of the contract.   Additional recommendations would be:   * Standard bid templates should be developed for all to use. * Access to master contracts and the process to utilize these contracts should be automated to allow easy access and usage. (good search features, submittal of on-line work requests/work orders, etc.) * Contract users should be able to readily provide contractor performance feedback on-line. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)  Office of State procurement checklists and presentations.  Steve Krueger  Various state websites (Oregon, Texas, Minnesota, Ohio). All have central purchasing entities with some version of centralized “master contracts” | | Assumptions / Pre-requisites / Dependencies:  Staff time is available at DES to set up master contracts.  Use of master contracts can be encouraged by increased easy to use automated features. | | Discussion of anticipated benefits:  Master contracts benefits include lower prices due to volume discounts and less staff time required at agencies to purchase the goods or services. Saves the state money.  Key Agency Benefits   * Volume Discounts and Increased Competition * Administrative and Time Savings   + Advertisement (Solicitation) & Development   + Acquisition Time * Standardization and Higher Quality   Vendors would reduce their costs since only one formal RFP proposal would be required. | | Discussion of anticipated concerns:  The new law has some possible conflicting wording. New Section 9 (3) states that the director or designee is the sole authority to enter into master contracts on behalf of the state. New Section 14 (5) states purchases from master contracts established by the department or an agency authorized by the department. If the director of DES can designate another agency to enter into a master contract then these are not conflicting statements. This should be clarified in rules.  The solicitation process may be different for goods, consulting services, professional services, and other services. Is there a difference between these categories and whether a purchase is information technology related that would require different processes both for the solicitation and the subsequent utilization of the master contract (second tier versus pick any vendor that meets needs)? The current staff involved in these different processes should meet and develop best practices that would inform the policy and guidance writers.  Currently there are socio economic concerns related to opportunities for MWBE’s and other categories of disadvantaged businesses to be able to compete for these large contracts. It is a challenge to balance all the socio economic factors.  Agencies that do not purchase from the master contracts can jeopardize the integrity of the process since the master contract vendors are not getting the volume of business anticipated. This could be monitored if there was e-procurement where currently it is difficult to monitor. | | List of alternate approaches: | |

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| Miscellaneous Issues Work Group  Risk Assessment for Delegation of Purchase Authority Recommendation |
| |  | | --- | | **2SHB2452 Reference for Recommendation: NEW SECTION. Sec. 10. DIRECTOR’S DUTIES AND RESPONSIBILITIES REGARDING PROCUREMENT. The director shall:**  **(5)Have authority to delegate to agencies authorization to purchase goods and services. The authorization must specify restrictions as to dollar or to specific types of goods and services, based on a risk assessment process developed by the department. Acceptance of the purchasing authorization by an agency does not relieve the agency from conformance with this chapter or from policies established by the director. Also, the director may not delegate to a state agency the authorization to purchase goods and services if the agency is not in substantial compliance with overall procurement policies as established by the director;** | | Primary Recommendation(s)   * Identify any type of good or service that will not be eligible for delegation (possibly fire arms, etc). * Establish a base level of delegated authority that applies to all agencies, with the ability for an agency to have a higher level of authority based on a risk matrix.   + Establish a base level for delegated authority as a default for all agencies.   + Establish a risk matrix with criteria that results in procurement risk levels. The criteria could include factors like training, certifications of staff, the results of audits by the State Auditor’s Office, and contract management practices. The risk matrix process could be similar to the current process for the Enterprise Risk Maturity Model.   + Establish tiered levels for delegated authorities based on the risk matrix. The tiered authority approach rewards agencies for implementing good procurement and contract management practices and builds a strong infrastructure for the state. The tiers could be tied to the training/certification levels. * Consistently apply this approach to all types of procurements that can be delegated (all but those in the first bullet above). Allow other oversight to manage other risks, such as IT standards and Technology Services Board oversight for large IT projects. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.) American Bar Assoc model code bases delegation on regulations (operational procedures) -§2-103 Delegation of Authority by the Chief Procurement Officer With the approval of the [head of the Purchasing Agency], and subject to regulations [operational procedures], the Chief Procurement Officer may delegate authority to designees or to any department, agency, or official.  The regulations go on to note factors that should be considered when deciding to delegate authority. They include –  (a) the expertise of the potential delegate in terms of procurement knowledge and any specialized knowledge pertinent to the authority to be delegated;  (b) the past experience of the potential delegate in exercising similar authority;  (c) the degree of economy and efficiency to be achieved in meeting the [State's] requirements if authority is delegated;  (d) the available resources of the Office of the Chief Procurement Officer to exercise the authority if it is not delegated; and  (e) the consistency of delegation under similar circumstances.  The regulations also state that the delegation should whether the authority can be delegated further. | | Assumptions / Pre-requisites / Dependencies:  Rules, policies and procedures should promote flexibility, efficiencies and a common approach to the procurement of goods and services.  **Sec 12.** DES will develop a training and certification program.  **Sec 20.** DES will adopt uniform policies and procedures for the effective and efficient management of contracts by all state agencies.  **Sec 23.** Agencies report all contracts to DES annually and a publicly available list is maintained.  **Sec 24.** The State Auditor and Attorney General will report annually to the Governor and legislature on audit findings, enforcement actions and resolutions.  Delegated authority does not apply when a master contract exists. | | Discussion of anticipated benefits:   * Provides a common approach in determining agencies’ authorities. * Encourages use of best practices, as will be established through policies and procedures. Agencies that follow the policies and procedures are rewarded with higher levels of delegated authority. * Allows the central service agency to focus on building the state’s infrastructure for procurement rather than on individual procurement efforts or requests. | | Discussion of anticipated concerns:  DES will need a way to identify when it would be advantageous to put a master contract in place. They currently gather information about what procurements are planned based on the $10,000 level of delegated authority. Our discussion was that the work to provide transparency might also provide this information for DES.  Some of the anticipated benefits of a common approach are removed if there are different levels set for different commodity/service areas. | | List of alternate approaches:  Use the current approach to delegated authority; low level ($10,000) for all but IT which is set for each agency at higher levels. DES would need to set these levels; both general and IT. | |

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| Miscellaneous Issues Work Group  Procurement & Contracting Cost Recovery Recommendation |
| |  | | --- | | **2SHB2452 Reference for Recommendation:**  **Section 6. (2) The department shall ensure full cost recovery from state agencies, other local or federal governmental agency or entity, public benefit nonprofit organizations, or any tribes located in the state, for activities performed pursuant to subsection (1) of this section. Cost recovery must ensure that the department is reimbursed its full cost for providing the goods and services furnished as determined by the department. Cost recovery may be collected through the state agency, other governmental entity, nonprofit organization, or through the contractor.**  **Section 25 (2) In addition to the powers and duties as provided in chapter 43, Laws of 2011 1st sp. sess., the department shall: provide products and services to support state agencies, and may enter into agreements with any other governmental entity or a public benefit nonprofit organization, in compliance with RCW 28 39.34.055, to furnish such products and services as deemed appropriate by both parties. The agreement shall provide for the reimbursement to the department of the reasonable cost of the products and services furnished. All governmental entities of this state may enter into such agreements, unless otherwise prohibited** | | Primary Recommendation  The preference would be to have one process for DES to recover their costs for procurement, contract development, and contract management services. Possible options:   1. Managed fee contracts where vendors are charged a management fee of specific percentage of the services provided. 2. Charge agencies a percentage based on the prior fiscal years payment to vendors for contracts managed by DES. 3. DES develop a direct charge back for actual work hours performed for agencies. 4. Implement a chargeback system similar to the way the Attorney General, State Auditor, Office of Administrative Hearings, etc. charge client agencies for their services.   Regardless of the option selected, there would most likely need to be a transition period has contracts are moved from their current cost recovery method to the preferred method of charging agencies for DES services. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)  A 2009 Survey of other States including the District Of Columbia showed:   * 14 States where the State’s central procurement agency charges state agencies for procurement related activity. The primary method of charging other agencies, was a percentage of spend on mandatory or state-wide contracts. * 11 States charged vendors either through a flat fee or percentage of contract value.   According to the survey A wide range of services were provided to States by the central procurement agency.  Below is a list of the services DES provides to customer agencies as part of their Administration Fee.   |  |  | | --- | --- | |  | Conduct meetings with DSHS through the procurement process, as needed. | |  | Draft solicitation documents for the acquisition. | |  | Work with DSHS’ program manager and staff in the preparation, development and release of the solicitation documents. | |  | Develop project schedule in coordination with DSHS schedules. | |  | Coordinate review of the draft solicitation with customer’s program manager and staff. Conduct base AG activities, OSP term clarification, and strategy counsel customary to state level contracts, as needed. | |  | Determine the need for and create agenda, prepare appropriate announcements, determine location for Prebid conference. | |  | Discuss with customer’s program manager, OSP’s notification, and solicitation distribution process. | |  | Develop bid/proposal lists in conjunction with customer’s program manager's selected suppliers, including the Office of Minority and Women Business Enterprise’s Certified MWBE listed firms. | |  | Finalize solicitation document, print copies and distribute to suppliers. | |  | Work with customer’s program manager to develop evaluation criteria for the weighting of requirements set forth in the solicitation. | |  | Draft scoring sheets to be used by evaluators. | |  | Document all telephone and written inquiries regarding the solicitation. | |  | Conduct Pre-bid conference(s) (with customer participation) | |  | Prepare and release addenda, as necessary. | |  | Maintain contract file and contract database information | |  | Accept all bids/proposals until due date for submission. | |  | Determine responsiveness of bids/proposals. | |  | Prepare bids/proposals for evaluation team. | |  | Facilitate and/or participate in the evaluation. | |  | Facilitate pre-award evaluation conferences as necessary. | |  | Tabulate final scores to determine successful bidder(s)/proposer(s). | |  | Meet with customer program manager to announce successful bidder/proposer and provide any necessary documentation. | |  | Notify successful bidder(s)/proposer(s). | |  | As applicable, facilitate response to protests. |   **OTHER TYPES OF SERVICES OFFERED BY DES**  **Single Purchase Requisitions:** Single purchase requests by DSHS to OSP shall be referenced in this agreement, but shall be billed in accordance with the current published OSP fee schedule going forward.  **Management Fee Contracts:** State contracts that are managed by OSP with the management cost paid quarterly by the contracted vendors (versus the agencies who use them), and therefore these contracts are not included in the PAF rate calculations. A list of these contracts is attached as Exhibit D.  **No-Fee Contracts:** OSP contracts that do not currently charge a fee shall not be included in this agreement. These contracts are in place to provide value to the State of Washington and currently include: ***Purchasing, Travel and Fleet Card Services, Travel Services and Discount Airfare*.**  **New Special DSHS Contracts and** **Advertising Costs**: These special costs are not included in the PAF contract service. . These items are considered non-PAF contract costs and shall be mutually determined by OSP and DSHS on a case-by-case basis. The fee will be based on the current published OSP fee schedule, set forth in. OSP will bill DSHS for the applicable fee, which will be paid by DSHS to OSP by each invoice due date. As an alternate, OSP may delegate to DSHS authority to make acquisition.  **Extraordinary Attorney General Costs:** Attorney and other services included in the contract pricing are the occasional AG costs resulting from OSP terms clarification and strategy counsel customary to the creation of state level contracts. The PAF contract fees do not include extraordinary services such as legal defense, DSHS specific requirements, or directions to seek AG counsel, professional services for technical expertise and DSHS required conferences, which will be paid separate from PAF contract services as agreed. DSHS must approve any such services and anticipated costs in writing prior to work commencing, and appropriate justification provided prior to DSHS being invoiced for such charges. | | Assumptions / Pre-requisites / Dependencies: | | Discussion of anticipated benefits: | | Discussion of anticipated concerns: | | List of alternate approaches:  Cost recovery options:   1. Implement managed fee contracts for all contracts developed and management by DES. Vendors would be charged a management fee of specific percentage of the services provided.   Pros: Relatively easy to capture data and formula for charging agencies.  Cons: Relies on accurate accounting and reporting by vendors to DES. Value of goods and services provided does not necessarily equate to amount of work by DES. Some vendors may be unwilling to accept the terms of a management fee. The amount of cost recovery would be dependent on the amount of spend which may not be sufficient to cover DES’s costs or could be greater than needed.   1. Charge agencies a percentage based on the prior fiscal years payment to vendors for contracts managed by DES.   Pros: Relatively easy to capture data and formula for charging agencies.  Cons: Relies on accurate accounting and reporting by vendors to DES. Value of goods and services provided does not necessarily equate to amount of work by DES. The amount of cost recovery would be dependent on the amount of spend which may not be sufficient to cover DES’s costs or could be greater than needed.   1. DES develops a direct charge back for actual work hours performed for agencies.   Pros: Provides documentable evidence of staff time attributed to specific billable activity.  Cons: Labor impact on DES staff part to track time. Maybe difficult to split work across different agencies for contracts used by multiple agencies.   1. Implement a chargeback system using the revolving fund reimbursement similar to the way the Attorney General, State Auditor, Office of Administrative Hearings, and other DES services (Facility Planners) are currently billed. charge client agencies for their services.   Pros: Model already exists for use. Billing agency must identify the costs they will bill. OFM ensures billed agencies have the funds to cover the costs.  Cons: | |

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| Miscellaneous Issues Work Group  Advisory Committee Question Response |
| Ethics – Section 3  Subsection 1(a) states that an employee of an agency who seeks to acquire goods or services or “who participates” in those contractual matters … What does this mean? Who is included in this prohibition?  Response: Any person who can affect or influence the outcome of an award would be subject to the Ethics statute RCW 42.52.150 (Limitation on Gifts). This would include any stakeholders, sourcing team members, or others that participate in the contractual process.  Subsection ~~2~~ 1(b) states that a contractor who contracts with an agency “to perform services related to the acquisition of goods and services” for the agency … What does this mean?  Response: This means that a contractor, who provides a good or service for the state is subject to RCW 42.52.150 (Limitation on Gifts). For example, the contractor needs to be aware of the limitation on gifts statute and not violate the law by offering prohibited gifts. Violations could be tied to debarment. An option to make vendors aware of this prohibition, is to put a notice on WEBS that they have to read, understand, and check a verification box.  Risk Assessment for delegating authority – Section 10(5)  What factors should DES look at in making this determination? What should the risk assessment process be? How should DES determine the restriction on dollar amount and restriction on specific types of goods and services?  Response: The factors should include training, certifications of staff, the results of audits by the State Auditor’s Office, and contract management practices. The risk assessment process should be a request from a state agency asking for a higher than the standard/basic delegation (for either a general delegation or a specific commodity/service area). Refer to example at the link below for specific factors and process.  [\\Gapsoly02\Home\cwarnoc\Procurement Reform\Procurement Reform Bill\Miscellaneous Workgroup\DSHS Risk Assessment Example.doc](file://Gapsoly02/Home/cwarnoc/Procurement%20Reform/Procurement%20Reform%20Bill/Miscellaneous%20Workgroup/DSHS%20Risk%20Assessment%20Example.doc)  The restriction on dollar amount should be tied to training tiers. Note: Risk is higher when staff are not trained properly (the risk is not necessarily associated with a dollar amount). Some goods and services may be restricted, such as fire arms, etc. These will have to be evaluated on a case-by-case basis and communicated through a purchasing guide or training manual.  Emergency Contracts – Section 15 Provide guidance or examples as to when an agency can make an “emergency” contract under this section.  Response: The declaration of an emergency purchase is subjective and requires an agency head approval. The guiding principles are unforeseen circumstances, beyond the control of the agency, threat to the proper performance of essential functions, result in loss or damage to property, bodily injury, or loss of life. Some examples are: repairs to avoid or as a result of flooding, medical equipment or pharmaceuticals to avoid loss of life, support services for landslides, earthquakes, or other natural disasters, septic or sewer system repair/replacement, furnace/boiler repair/replacement, road or bridge repairs that are posing immediate safety risk, etc. These are only examples and each circumstance is different; therefore, each situation should be weighed against the above guiding principles.  Performance Bonds – Section 21 What factors should an agency consider in order to decide whether to require a contractor to submit a performance bond? If an agency wants a performance bond, how do you determine the size and scope of the bond?  Response: Performance bonds should be discouraged, as they tend to raise the overall cost of products or services, restrict small business participation, and are hard to collect. Therefore, they should only be used when a contractor’s performance is critical or other projects depend on the timely performance of this contract; and/or large infrastructure systems.  Instead, agencies should use performance based contracting criteria, terms and conditions to protect against non-performance (such as identifying that if a contractor is found to be in breach of contract for non-performance, then the state reserves the right to award to the next low bidder and the contractor will be responsible for all additional costs, including any re-procurement costs), performance based product specifications, performance requirements, specific delivery terms, etc. This should all be part of the training curriculum and DES should have a point of contact related to performance bonds.  The size of the bond should represent the costs of anticipated damages (or consequences) should the contractor fail to perform. |

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| Small Business Work Group  Model Plan Recommendation |
| |  | | --- | | **Chapter 224 Laws of 2012 2SHB2452 Reference for Recommendation, e.g. NEW SECTION. Sec. 1 INTENT.**  **In addition, the legislature intends that the state develop procurement policies, procedures, and materials that encourage and facilitate state agency purchase of goods and services from Washington small businesses.** | | **Primary Recommendation # 1**  Make adoption of the Department of Enterprise Services (DES) Model Plan or an agency specific supplier diversity plan a qualifying element for purchase authority delegation to a state agency. The DES Model Plan **(2012 2SHB2452 Section 24)** review or report of agency supplier diversity effort should occur annually or in concert with the scheduled agency procurement & contracting risk assessment, with DES Model Plan results or agency supplier diversity plan results, informing the renewal level of agency procurement authority delegation. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)  State Policies and programs for Minority- and Women-Business Development, December 14, 2007, Insight: Center for Community Economic Development | | **Assumptions / Pre-requisites / Dependencies:**  This recommendation depends on a program that uses established criteria for purchase authority delegation from DES to state agencies. | | **Discussion of anticipated benefits:**  Tying procurement authority delegation to a supplier diversity plans and success measures will put the supplier diversity discussion front and center, engage OMWBE, DVA, and small business stakeholders in the procurement delegation discussion to highlight needed resources and tools for success and to share those with other state agencies. | | **Discussion of anticipated concerns:**  Success measures are dependent on electronic purchase data capture tools that do not currently exist and any attempt to substitute manual data capture processes would be inefficient and yield data of low quality that is not suitable for performance measures.  Procurement qualification requirements may remain too high to allow Washington Small Businesses to participate in Washington State Procurements, e.g. prior contract experience with more than one Washington State Agency. State workload could become a competing priority for annual vendor competitions, if the competitive process is not streamlined. | | **List of alternate approaches:**  Tie delegated purchase authority to OMWBE purchasing goals and DVA purchasing goals.  Tie delegated purchase authority to purchase card diversity spend report results, even though the federal criteria used are not the same as the Washington Small Business criteria for the state of Washington, the agency spend via the purchase card may be categorized by the banks for federal reporting purposes and could supply a starting point for trending state agency small business and supplier diversity efforts.  The Washington State Office of Minority & Women Owned Businesses Supplier Diversity Score card uses 24 elements to measure successful diversity supplier engagement.  Model plan should include:   * Strategy for increasing the number of small businesses registered in WEBS. * Strategy for increasing the number of state certified M/W/V/x/x firms. * Coordination with the Department of Licensing, the Department of Revenue, and other agencies with data about the businesses in the state of Washington. * Required training for procurement staff * A large pool of available qualified firms is a pre-requisite for the utility of the model plan   In support of a risk matrix approach to agency procurement delegation the following scorecard was offered by OMWBE.  **Scorecard**   |  | | --- | | Red | | No Plans, Inactive | | 1. No Plans | | 2. No Goals | | 3. No Leadership | | 4. No Implementation Objectives | | 5. Buyers Have No Knowledge of SD | | 6. No SD Training for Agency | | Yellow Basic | | **Stage One, Basic Plan** | | 1. Mission of Plan | | 2. Statement of Commitment from Top of Agency | | 3. Identified Chain of Command Top Down | | 4. Specific Measures to increase participation of certified businesses | | 5. Communicating the policy and appropriate procedures to all staff | | 6. SD Training of staff involved in implementation | | 7. Annual forecasting of contracting, procurement, other expenditure activity, and goal setting | | 8. Setting individual contract goals | | 9. Ensuring compliance of contractors and vendors including second tier-Monitor Plan | | 10. Maintenance of records regarding contract awards, purchase orders, and other including second tier | | 11. Reporting all expenditures accurately and in a timely manner | | 12. Resolving disputes and investigating complaints | | 13. Remove barriers from procurement documents and practices that prevent increase utilization | | "Yellow Performing" | | **Stage Two, Performing** | | 14. Utilization numbers increasing | | 15. Achieving Goals | | 16. Solicitation Documents, Policies, Practices, and Procedures free from Barriers | | 17. Participate in DES Sourcing Teams | | 18. Corrective Action | | "Green" Out Performing | | **Out Performing** | | 19. Continuing to achieve all of Yellow Stage Two | | 20. SD is Self Sustaining (not dependent on single person) | | 21. SD is Policy | | "Gold" High Achiever | | **High Achiever** | | 22. Continuing to achieve all Green | | 23. Exceeded stated Goals Two Consecutive Years | | 24. Mentoring other Agencies | | |

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| Small Business Work Group  Secondary Source of Supply Recommendation |
| |  | | --- | | **Chapter 224 Laws of 2012 2SHB2452 Reference for Recommendation, e.g. NEW SECTION. Sec. 1 INTENT.**  **In addition, the legislature intends that the state develop procurement policies, procedures, and materials that encourage and facilitate state agency purchase of goods and services from Washington small businesses.** | | **Primary Recommendation #2**  Where it makes sense, permit state agencies to include Washington Small Businesses, Diverse Suppliers, or Washington Certified Veteran Owned Businesses to be included as secondary sources of supply on state contracts, when they are responsive but do not otherwise qualify to be awarded as the prime contractor.  Alternatively where it makes sense, permit agencies to require large contractors to subcontract up to 25% of the contract value with Washington Small Businesses, Diverse Businesses, or State Certified Veteran Owned Businesses | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)  State Policies and programs for Minority- and Women-Business Development, December 14, 2007, Insight: Center for Community Economic Development | | **Assumptions / Pre-requisites / Dependencies:**  This recommendation depends on the state’s procurement workforce being trained to understand how to include secondary source of supply or a subcontractor relationship, including solicitation and contract templates for secondary sources of supply. The recommendation also assumes that Washington Small Businesses, Diverse Businesses or State Certified Veteran Owned Businesses are registered in WEBS and are available and responsive to opportunities to perform as a secondary source of supply or subcontractor for the kinds of goods and services the state needs to acquire through contract. | | **Discussion of anticipated benefits:**  Making Washington Small Businesses, Diverse Businesses or State Certified Veteran Owned Businesses available for purchases via state contract directly facilitates purchases from Washington Small Businesses. | | **Discussion of anticipated concerns:**  Procurement requirements may remain too high to allow Washington Small Businesses, Diverse Businesses, or State Certified Veteran Owned Businesses to participate in Washington State Procurements | | **List of alternate approaches:**  Include Washington Small Business, Diverse Businesses, or State Certified Veteran Owned Businesses participation in contract negotiations with the primary contractor upon contract initiation and at every contract renewal event. Facilitate networking and partnering events unrelated to specific contracting efforts. | |

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| Small Business Work Group  Prequalified Vendor List Refresh Recommendation 1 |
| |  | | --- | | **2SHB2452 Reference for Recommendation, e.g. NEW SECTION. Sec. 1 INTENT.**  **In addition, the legislature intends that the state develop procurement policies, procedures, and materials that encourage and facilitate state agency purchase of goods and services from Washington small businesses.** | | **Primary Recommendation #3**  When the state establishes 2-tier contract category that consists of a pre-qualified list of vendors with first rights to available statements of work for the established category of contract work; if the pre-qualified vendor list for that contract does not include Washington Small Businesses, Diversity Suppliers, or Washington Certified Veteran Owned Businesses, the state shall increase the frequency of opportunities to qualify additional vendors from annually to quarterly. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)  State Policies and programs for Minority- and Women-Business Development, December 14, 2007, Insight: Center for Community Economic Development | | **Assumptions / Pre-requisites / Dependencies:**  This recommendation depends on continuation of the state practice of establishing 2-tier pre-qualified list contracts. | | **Discussion of anticipated benefits:**  Increase the opportunity for Washington Small Businesses, Diversity Suppliers, or Washington Certified Veteran Owned Businesses to become available for purchases via state contract to directly facilitate purchases from Washington Small Businesses. | | **Discussion of anticipated concerns:**  Procurement qualification requirements may remain too high to allow Washington Small Businesses to participate in Washington State Procurements, e.g. prior contract experience with more than one Washington State Agency. State workload could become a competing priority for quarterly vendor qualifications, if the qualification process is not streamlined. | | **List of alternate approaches:**  Increase frequency of vendor pre-qualifications from annually to semi-annually. | |

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| Small Business Work Group  Prequalified Vendor List Refresh Recommendation 2 |
| |  | | --- | | **Chapter 224 Laws of 2012 2SHB2452 Reference for Recommendation, e.g. NEW SECTION. Sec. 1 INTENT.**  **In addition, the legislature intends that the state develop procurement policies, procedures, and materials that encourage and facilitate state agency purchase of goods and services from Washington small businesses.** | | **Primary Recommendation #3**  When the state establishes 2-tier contract category that consists of a pre-qualified list of vendors with first rights to available statements of work for the established category of contract work; if the pre-qualified vendor list for that contract does not include Washington Small Businesses, Diversity Suppliers, or Washington Certified Veteran Owned Businesses, the state shall increase the frequency of opportunities to qualify additional vendors from annually to quarterly. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)  State Policies and programs for Minority- and Women-Business Development, December 14, 2007, Insight: Center for Community Economic Development | | **Assumptions / Pre-requisites / Dependencies:**  This recommendation depends on continuation of the state practice of establishing 2-tier pre-qualified list contracts. | | **Discussion of anticipated benefits:**  Increase the opportunity for Washington Small Businesses, Diversity Suppliers, or Washington Certified Veteran Owned Businesses to become available for purchases via state contract to directly facilitate purchases from Washington Small Businesses. | | **Discussion of anticipated concerns:**  Procurement qualification requirements may remain too high to allow Washington Small Businesses to participate in Washington State Procurements, e.g. prior contract experience with more than one Washington State Agency. State workload could become a competing priority for quarterly vendor qualifications, if the qualification process is not streamlined. | | **List of alternate approaches:**  Increase frequency of vendor pre-qualifications from annually to semi-annually. | |

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| Small Business Work Group  Small Business Liaison Recommendation |
| |  | | --- | | **Chapter 224 Laws of 2012 2SHB2452 Reference for Recommendation, e.g. NEW SECTION. Sec. 1 INTENT.**  **In addition, the legislature intends that the state develop procurement policies, procedures, and materials that encourage and facilitate state agency purchase of goods and services from Washington small businesses.** | | **Primary Recommendation #4**  Facilitate Washington Small Vendor participation in state contracts by:   1. Maintaining a list of knowledgeable state agency contacts for Washington Small Businesses by training the Washington State Small Business Liaisons cooperating with the Office of Regulatory Assistance <http://www.ora.wa.gov/documents/sbl_flyer.pdf> to also serve as procurement liaisons for Washington Small Businesses. 2. Establish at DES a Washington Small Business point of contact for procurement access and vendor training. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)  State Policies and programs for Minority- and Women-Business Development, December 14, 2007, Insight: Center for Community Economic Development | | **Assumptions / Pre-requisites / Dependencies:**   1. This recommendation depends on continuation of the Washington State Governor’s Office of Regulatory Assistance. 2. This recommendation depends on the DES staff availability for a Washington Small Business contact. | | **Discussion of anticipated benefits:**  In person contact for small business increases accountability for the intent to encourage and facilitate state agency purchase of goods and services from Washington small businesses. The more agency contacts available the better the response opportunity for Washington Small Business inquiries. | | **Discussion of anticipated concerns:**  Agency staffing may preclude opportunities to provide in person procurement support for Washington Small Businesses. | | **List of alternate approaches:**  Train DES Customer Service and other agency Customer Service Staff to answer or otherwise direct inquiries from Washington Small Businesses. Require minimum common data elements for all | |

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| Small Business Work Group  Limit Contract Terms for Contract Without Small Business Participation Recommendation |
| |  | | --- | | **Chapter 224 Laws of 2012 2SHB2452 Reference for Recommendation, e.g. NEW SECTION. Sec. 1 INTENT.**  **In addition, the legislature intends that the state develop procurement policies, procedures, and materials that encourage and facilitate state agency purchase of goods and services from Washington small businesses.** | | **Primary Recommendation #5**  When it makes sense permit the state to refrain from initial contract terms longer than one year and encourage the state agencies to evaluate automatic contract extensions for remedial competition when the contract does not include participation from Washington Small Businesses, Diversity Suppliers, or Washington Certified Veteran Owned Businesses. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)  State Policies and programs for Minority- and Women-Business Development, December 14, 2007, Insight: Center for Community Economic Development | | **Assumptions / Pre-requisites / Dependencies:**  This recommendation depends on continuation of the state practice of establishing long term contracts.  This recommendation requires sufficient procurement staffing to conduct more frequent solicitations and evaluations. | | **Discussion of anticipated benefits:**  Increase the opportunity for Washington Small Businesses, Diversity Suppliers, or Washington Certified Veteran Owned Businesses to compete for Washington state contracts. . | | **Discussion of anticipated concerns:**  Procurement qualification requirements may remain too high to allow Washington Small Businesses to participate in Washington State Procurements, e.g. prior contract experience with more than one Washington State Agency. State workload could become a competing priority for annual vendor competitions, if the competitive process is not streamlined. | | **List of alternate approaches:**  Survey Washington Small Businesses, Diversity Suppliers, or Washington Certified Veteran Owned Businesses six months prior to contract termination date to determine their competitive interest in subsequent re-solicitation for the particular contract. Use the survey results to create a Washington Small Business inclusion plan for the subsequent re-solicitation. The plan may include vendor conferences to share information about the current contract performance and to introduce Washington Small Businesses to the current contract supplier and to current state customers using the state contract. | |

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| Small Business Work Group  Pre-qualify Small Businesses for State Insured Statements of Work |
| |  | | --- | | **Chapter 224 Laws of 2012 2SHB2452 Reference for Recommendation, e.g. NEW SECTION. Sec. 1 INTENT.**  **In addition, the legislature intends that the state develop procurement policies, procedures, and materials that encourage and facilitate state agency purchase of goods and services from Washington small businesses.** | | **Primary Recommendation #6**  Work with the State Risk Manager to develop something akin to the construction small works roster program that would pre-qualify Washington Small Businesses, Diverse Suppliers, or Washington Certified Veteran Owned Businesses for low risk categories of business opportunities with the state of Washington. Such a program would use the state’s self insurance program to transfer risk for these categories of low risk business engagements from the vendor to the state of Washington in order to eliminate the barrier of state insurance requirements for Washington Small Businesses, Diverse Suppliers, or Washington Certified Veteran Owned Businesses engaging in low risk categories of business with the state of Washington. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)  State Policies and programs for Minority- and Women-Business Development, December 14, 2007, Insight: Center for Community Economic Development | | **Assumptions / Pre-requisites / Dependencies:**  This recommendation depends on the state’s ability to define categories of business engagements of sufficient low risk for the state to accept the risk of self insurance. | | **Discussion of anticipated benefits:**  A significant insurance barrier reduction for Washington Small Businesses, Diverse Suppliers, or Washington Certified Veteran Owned Businesses to gain entrance to Washington State Government business.  A significant opportunity for the state to experience the value proposition that is unique to small business, e.g. creative solutions with velocity.  Such a roster of pre-qualified Small Businesses, Diverse Suppliers, or Washington Certified Veteran Owned Businesses would give the state the opportunity to understand in one contract program what small businesses, diverse, and State Certified Veteran Owned Business are available and ready to meet categories of state needs. | | **Discussion of anticipated concerns:**  Non-insurance procurement qualification requirements may remain too high to allow Washington Small Businesses to participate in Washington State Procurements, e.g. prior contract experience with more than one Washington State Agency. State workload could become a competing priority if this unique procurement process is not streamlined. | | **List of alternate approaches:**  If the state cannot overcome the risk transfer, such a roster could still be developed and made available to state of Washington prime contractors to support their state contract requirements. | |

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| Small Business Work Group Recommendations  Electronic Procurement Solution for Tracking Business with Small Businesses Recommendation |
| |  | | --- | | **Chapter 224 Laws of 2012 2SHB2452 Reference for Recommendation, e.g. NEW SECTION. Sec. 1 INTENT.**  **In addition, the legislature intends that the state develop procurement policies, procedures, and materials that encourage and facilitate state agency purchase of goods and services from Washington small businesses.** | | **Primary Recommendation #7a**  Recommend that funding be prioritized to provide an enterprise wide electronic procurement solution for the state of Washington to categorize spending with target suppliers at the point of purchase.  Performance measures for any program to increase state spending with Small Businesses, Diverse Suppliers, or Washington Certified Veteran Owned Businesses, are handicapped from the beginning without systems to categorize spending with these target suppliers at the point of purchase. This fact has been made known and established as an unmet dependency for programs to increase purchases from Small Businesses, Diverse Suppliers, or Washington Certified Veteran Owned Businesses. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)  WA State Department of Enterprise Services EProcurement Business Case 2012  December 17, 2011 SciQuest Technical Proposal Response to State of Colorado WSCA RFP #RFP-TS-00003-11 EProcurement Services | | **Assumptions / Pre-requisites / Dependencies:**  This recommendation depends on the governor and legislature’s ability to understand this need and to prioritize funding to meet this timely need for categorized spending data. | | **Discussion of anticipated benefits:**  Electronic Procurement Solutions differ from enterprise reporting systems in that they create electronic catalogs for contract goods and services that categorize those goods and services by commodity code and other socioeconomic attributes including small business, diverse, and certified businesses. This creates visibility for those vendors at the point of sale. They also include electronic work flow for purchase authorization that could increase timely accountability to the management level for the opportunity to course correct spend that does not address spend with target supplier categories. | | **Discussion of anticipated concerns:**  Small Business, Diverse Business, and State Certified Business initiatives without the tools to change purchasing behaviors and to monitor trends in purchasing behaviors while spending is active not after budgets are spent, will communicate low value for the initiative and reduce state government susceptibility to these and similar change initiatives. | | **List of alternate approaches:**  Annually fund a data study of disparate spend data and state certified Diverse Businesses to create a baseline of spend with small business, diverse businesses, and state certified -veteran owned businesses, -minority owned businesses, -woman owned businesses, and -minority and woman owned businesses. Until a state electronic procurement system can be put in place, these annual data snapshots could be used for trending state results for promoting purchases from these categories of businesses.  Estimate $43,000 to $250,000 per annual study depending on the sample size and 3rd party analyst contractor used. | |

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| Small Business Work Group  Rebate Fund for Agencies Purchasing From Small Business Recommendation |
| |  | | --- | | **Chapter 224 Laws of 2012 2SHB2452 Reference for Recommendation, e.g. NEW SECTION. Sec. 1 INTENT.**  **In addition, the legislature intends that the state develop procurement policies, procedures, and materials that encourage and facilitate state agency purchase of goods and services from Washington small businesses.** | | **Primary Recommendation #8**  Recommend the legislature establish a rebate fund to encourage state spending with target categories of suppliers, i.e. small business, diverse business, state certified business. Agencies can report purchases with target suppliers to become eligible for an incentive rebate from the fund based on a percentage of the dollars spent with target supplier categories. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)  The purchase card rebate program has been a significant contributor to the successful implementation of the state purchasing card program to help reduce the cost of accounts payable processing. | | **Assumptions / Pre-requisites / Dependencies:**  This recommendation depends on the state agency capacity to manually capture spend data with target suppliers for rebate reporting. | | **Discussion of anticipated benefits:**  A rebate program offers a tangible benefit to state agency programs to direct their spending with target suppliers in order to qualify for rebates that could help to offset the increased cost associated with implementing a robust supplier diversity program. | | **Discussion of anticipated concerns:**  Without automated systems to track spending with targets supplier categories, the effort to track the spending for rebate qualification could exceed the benefit of the rebate. | | **List of alternate approaches:**  Limiting rebate program to purchase card spending could reduce the administrative burden; however this could shift some the cost to participate to the target supplier category in the form of VISA interchange fees for taking the state’s purchase card.  Explore other sources of funding for the incentive rebate. | |

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| Small Business Work Group  Small Business Friendly Solicitation Cover Page Recommendation |
| |  | | --- | | **Chapter 224 Laws of 2012 2SHB2452 Reference for Recommendation, e.g. NEW SECTION. Sec. 1 INTENT.**  **In addition, the legislature intends that the state develop procurement policies, procedures, and materials that encourage and facilitate state agency purchase of goods and services from Washington small businesses.** | | **Primary Recommendation #9**  Facilitate Washington Small Vendor participation in state contracts by:   1. Developing and requiring the use of a common procurement solicitation cover page to easily inform Washington Small Business of the following information which is critical to their participation decision:    1. Title of the procurement that reflects the good or service to be purchased    2. Source of funds    3. Estimated Dollar Value Range for the Solicitation e.g. ($100,000 to $150,000)    4. Delivery Date & Place | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)  State Policies and programs for Minority- and Women-Business Development, December 14, 2007, Insight: Center for Community Economic Development | | **Assumptions / Pre-requisites / Dependencies:**   1. This recommendation depends on the ability of DES to promulgate a common procurement cover form statewide. | | **Discussion of anticipated benefits:**  A common solicitation cover will help all businesses large and small to quickly understand and take a position on state procurement opportunities. | | **Discussion of anticipated concerns:**  Agency autonomy over their communication forms may compromise a common look and data presentation for state of Washington solicitations. | | **List of alternate approaches:**  Require minimum common data elements for all State Agency solicitation documents as follows:   1. Title of the procurement that reflects the good or service to be purchased 2. Source of funds 3. Budget 4. Delivery Date & Place | |

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| Small Business Work Group  Audit State Payment Practices for Small Business Impacts |
| |  | | --- | | **Chapter 224 Laws of 2012 2SHB2452 Reference for Recommendation, e.g. NEW SECTION. Sec. 1 INTENT.**  **In addition, the legislature intends that the state develop procurement policies, procedures, and materials that encourage and facilitate state agency purchase of goods and services from Washington small businesses.** | | **Primary Recommendation #10**  Recommend an audit of state payment processes for impacts to small businesses and to identify opportunities to reduce negative impacts to small businesses.  Small businesses have reported concerns over late payment impacts to cash flow, increasing VISA interchange fees related to state vendor payment processes, etc. | | References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)  The purchase card rebate program has been a significant contributor to the successful implementation of the state purchasing card program to help reduce the cost of accounts payable processing; however some state agencies have expressed confusion to the Office of Financial Management over the state’s credit card program and the state’s rules against lending the state’s credit that have resulted in both late payments and VISA interchange fees to state vendors. | | **Assumptions / Pre-requisites / Dependencies:**  This recommendation depends on available funding for such a statewide audit. | | **Discussion of anticipated benefits:**  A state audit of payment processes for impacts to small businesses and to identify opportunities to reduce negative impacts to small businesses could help the state to develop payment polices and training for state accounts payable staff that will make it a better business partner for small business. | | **Discussion of anticipated concerns:**  Small businesses have expressed concern over state contract payment terms such as those that ask for a prompt payment discount when a vendor agrees to accept the state’s credit card. A discount on top of a VISA interchange fee equates to lower profit and increased costs for doing business with the state and this does not make sense to small businesses.  Different contracts have different payment terms and many of these payment terms have poor to no visibility to state accounts payable staff. | | **List of alternate approaches:**  Provide state-wide training to state accounts payable staff on ways to operate in a manner that is most appropriate for encouraging small business participation.  Update the State Administrative and Accounting Manual to clarify the use of state purchase cards and the rules against lending state’s credit. | |

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| Small Business Work Group  Increase Direct Buy Limit for Purchases from Small Business Recommendation |
| |  | | --- | | **2SHB2452 Reference for Recommendation:**  **NEW SECTION Sec. 2.(4)(14)(19)(20)(21) DEFINITIONS**  **NEW SECTION Sec. 10.(6) DIRECTOR’S DUTIES AND RESPONSIBILITIES REGARDING PROCUREMENT**  **Sec. 26. (1)(3)(4) RCW 43.19.725 and 2011 c 358 s 2**  **Sec. 27.(1)(2)(3) RCW 43.19.727 and 2011 c 358 s 3** | | **Recommendation 11**  **Options:**   1. Raise the direct buy limit by $3,000 above the agency’s direct buy delegation dollar threshold for any purchase of goods or services from a Washington owned small, micro, mini, veteran, woman, or minority vendor (excluding goods or services offered on Master Contracts). Orders/contracts should not be split to circumvent purchasing regulations.   The point is to allow easier awarding of contracts or orders to small, micro, mini (etc) vendors so there is real encouragement to purchase from them at the agency level. This could be a huge savings of resource time for procurement staff. Fair market value of goods/services should be considered when buying direct. | | **References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)**  Researched OMWBE requirements in Oregon and Idaho. Oregon’s are similar to WA requirements, but they have an “Inclusive Invitation” solicitation from $5000 to $150,000 where they can pick vendors to get a “mixed or balanced” solicitation. Over $150,000 they must notify all vendors.  Idaho requires at least 3 Idaho vendors be solicited for bids, but there are no preferences, goals or quotas to purchase from small, minority/disadvantaged vendors.  The state of Illinois has a “set aside” program for procurements open only to small vendors where the contract is awarded to the lowest responsible bidder who is qualified under the definitions of small business.  The state of Connecticut has a Minority and Small Contractor’s Set Aside program where 25% of state funded purchases are set aside for small and minority vendors. Vendors must be certified. | | **Assumptions / Pre-requisites / Dependencies:**  Assumptions: Assume integrity of the procurement professional in not violating ethics laws or unfairly favoring one or more vendors. Assume WEBS can identify all the different vendor groups for availability and that solicitations can be posted specifically to one or more identified groups (this is currently possible).  Pre-Requisites: Must be able to verify vendors are what they claim to be (small, micro, mini, women etc). Vendor lists need to be readily available on line (preferably in WEBS). Vendors need to be notified they must update their registration to identify they are MWBE/Small/Micro/Mini/WA owned so they are easily identifiable in the system.  Dependencies: A better system to track these purchases is needed, or enhancement/merging of current statewide systems (i.e. WEBS, ECMS) to assist in reporting the increases in small business purchasing by agencies. Tracking could prove difficult in agencies where the purchasing is decentralized with many staff using Purchasing Cards. P-Card Custodians would need training on new guidelines/opportunities for small business purchasing. | | **Discussion of anticipated benefits:**  This could make awarding contracts or orders to small, micro, mini (etc) vendors much easier and would result in utilizing them more at the agency level. This could be a huge savings of resource time for procurement staff being able to buy direct, or if competition is required to have a smaller group of vendors participating/bidding.  These would be optional procurement practices and not mandatory. Agencies could decide what percentage of state funded purchases would be set aside specifically for small/micro/mini (etc) participation or notification of bidding opportunities.  Agencies could establish better communication and rapport with small/mini/micro/veteran vendors by conducting direct buys rather than requiring them to bid against much larger more established vendors.  This would be a win/win situation for both the state (increasing purchasing from small businesses as required in Chapter 43.19.725/727 RCW) and for the small business community. This could also assist agencies to meet the recommendations of Chapter 43.60.A.200 RCW to award 3% of non-competitive contracts to veteran owned businesses. | | **Discussion of anticipated concerns:**  Favoritism could be a problem and hard to control especially in agencies where purchasing is decentralized.  Not certain WEBS could be used as fully as would be needed to certify and track the vendors.  Currently there is no “certification” for small, micro, or mini vendors.  The bill is inconsistent in the definitions of small, micro and mini businesses. Small is identified as an “in-state business”, micro and mini are identified as “any business entity” under specified gross annual revenues.  Could be claims of unfairness from larger vendors in not receiving business from the state for procurements going directly to, or set aside specifically for small business vendors. | | **List of alternate approaches:**  Continue to encourage state purchasing staff to award contracts and orders to small, micro, mini (etc) vendors as much as possible. Conduct workshops for staff to help increase purchasing from small, micro, and mini (etc) vendors.  Have better incentives for utilizing small, micro, mini (etc) vendors, such as a decrease in agency fees by DES if certain goals of awarding to small, micro, mini (etc) vendors are met. | |

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| Small Business Work Group  Selective Solicitation to Small Business Recommendation |
| |  | | --- | | **2SHB2452 Reference for Recommendation:**  **NEW SECTION Sec. 2.(4)(14)(19)(20)(21) DEFINITIONS**  **NEW SECTION Sec. 10.(6) DIRECTOR’S DUTIES AND RESPONSIBILITIES REGARDING PROCUREMENT**  **Sec. 26. (1)(3)(4) RCW 43.19.725 and 2011 c 358 s 2**  **Sec. 27.(1)(2)(3) RCW 43.19.727 and 2011 c 358 s 3** | | **Primary Recommendation 12**  **Options:**   1. Allow agencies to make Diverse Supplier goals a significant competitive solicitation requirement and allow agencies to express that requirement through a variety of methods including limited WEBS posting to notify **only** WEBS registered Washington owned small, micro, mini, veteran, woman, or minority vendors for purchases within an agency’s purchasing authority. Other vendors would not be excluded from bidding if they wanted to but would not be *notified* of the procurement via WEBS. Allow agencies to decide up front if they wanted to “set aside” a percentage of procurements to be handled this way (per year or biennium), or possibly for certain commodities.   The point is to allow easier awarding of contracts or orders to small, micro, mini (etc) vendors so there is real encouragement to purchase from them at the agency level. This could be a huge savings of resource time for procurement staff. Fair market value of goods/services should be considered when buying direct.  WEBS should be used as much as possible and enhanced to track the number of contracts/orders awarded to small, micro, mini (etc) vendors for reporting purposes. Possibly vendors could self report contracts in the system if it was enhanced. Better tools are needed by state agencies to be able to select vendors and verify their status as a Washington owned, small, micro, mini, woman or minority owned vendor. | | **References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)**  Researched OMWBE requirements in Oregon and Idaho. Oregon’s are similar to WA requirements, but they have an “Inclusive Invitation” solicitation from $5000 to $150,000 where they can pick vendors to get a “mixed or balanced” solicitation. Over $150,000 they must notify all vendors.  Idaho requires at least 3 Idaho vendors be solicited for bids, but there are no preferences, goals or quotas to purchase from small, minority/disadvantaged vendors.  The state of Illinois has a “set aside” program for procurements open only to small vendors where the contract is awarded to the lowest responsible bidder who is qualified under the definitions of small business.  The state of Connecticut has a Minority and Small Contractor’s Set Aside program where 25% of state funded purchases are set aside for small and minority vendors. Vendors must be certified. | | **Assumptions / Pre-requisites / Dependencies:**  Assumptions: Assume integrity of the procurement professional in not violating ethics laws or unfairly favoring one or more vendors. Assume WEBS can identify all the different vendor groups for availability and that solicitations can be posted specifically to one or more identified groups (this is currently possible).  Pre-Requisites: Must be able to verify vendors are what they claim to be (small, micro, mini, women etc). Vendor lists need to be readily available on line (preferably in WEBS). Vendors need to be notified they must update their registration to identify they are MWBE/Small/Micro/Mini/WA owned so they are easily identifiable in the system.  Dependencies: A better system to track these purchases is needed, or enhancement/merging of current statewide systems (i.e. WEBS, ECMS) to assist in reporting the increases in small business purchasing by agencies. Tracking could prove difficult in agencies where the purchasing is decentralized with many staff using Purchasing Cards. P-Card Custodians would need training on new guidelines/opportunities for small business purchasing. | | **Discussion of anticipated benefits:**  This could make awarding contracts or orders to small, micro, mini (etc) vendors much easier and would result in utilizing them more at the agency level. This could be a huge savings of resource time for procurement staff being able to buy direct, or if competition is required to have a smaller group of vendors participating/bidding.  These would be optional procurement practices and not mandatory. Agencies could decide what percentage of state funded purchases would be set aside specifically for small/micro/mini (etc) participation or notification of bidding opportunities.  Agencies could establish better communication and rapport with small/mini/micro/veteran vendors by conducting direct buys rather than requiring them to bid against much larger more established vendors.  This would be a win/win situation for both the state (increasing purchasing from small businesses as required in Chapter 43.19.725/727 RCW) and for the small business community. This could also assist agencies to meet the recommendations of Chapter 43.60.A.200 RCW to award 3% of non-competitive contracts to veteran owned businesses. | | **Discussion of anticipated concerns:**  Favoritism could be a problem and hard to control especially in agencies where purchasing is decentralized.  Not certain WEBS could be used as fully as would be needed to certify and track the vendors.  Currently there is no “certification” for small, micro, or mini vendors.  The bill is inconsistent in the definitions of small, micro and mini businesses. Small is identified as an “in-state business”, micro and mini are identified as “any business entity” under specified gross annual revenues.  Could be claims of unfairness from larger vendors in not receiving business from the state for procurements going directly to, or set aside specifically for small business vendors. | | **List of alternate approaches:**  Continue to encourage state purchasing staff to award contracts and orders to small, micro, mini (etc) vendors as much as possible. Conduct workshops for staff to help increase purchasing from small, micro, and mini (etc) vendors.  Have better incentives for utilizing small, micro, mini (etc) vendors, such as a decrease in agency fees by DES if certain goals of awarding to small, micro, mini (etc) vendors are met. | |

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| Small Business Work Group  Certification of Small Business Recommendation |
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Employing a combination of both criteria would help serve those companies that are truly small, financially and organizationally. The bullets below outline the suggested constituents, certifying authorities, and requirements for eligibility for each constituent in the SBS program. While M/WBE and Veteran-Owned Businesses are already certified by OMWBE and DVA, respectively, eligibility requirements for Small and Micro Businesses will need to be established and applicants will need to be certified. The State may choose to designate DES as the certifying authority for these constituents.   * M/WBE certified by State of Washington OMWBE with eligibility requirements determined OMWBE * Veteran-Owned Business certified by the State of Washington Department of Veterans Affairs (DVA) with eligibility requirements determined by DVA * Small, Mini, and Micro Businesses may be certified by DES using Federal SBA standards to establish small, mini, and micro business size standards for certification. Need to establish size standards in terms of annual revenues and number of employees for Small, Mini, and Micro Businesses. Micro vs. Small Businesses I consider Small, Minim, and Micro Businesses to be separate and distinct classes of business. As a result of the economic recession and tight labor market, there is an increasing “cottage industry” of one-person consultancies that provide services based on the business owner’s area of professional specialization. These one-person shops usually earn significantly less than $1M annually and cannot compete with established, larger companies with more resources. The following size ranges illustrate the parameters that I recommend using for the different classes of business. The State may choose to consider this guideline in addition to SBA size standards in establishing Small and Micro Business size standards. Criteria Micro Business Small Business Mid-Size Business Enterprise Business Annual revenues < $1M $1-10M, $10-100M, $100M+, Number of employees <10 10-99 100-999 1,000+ | | **References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)**  **Federal Small Business Administration**  <http://www.sba.gov/content/am-i-small-business>  <http://www.sba.gov/content/determining-size-standards>  <http://www.sba.gov/content/table-small-business-size-standards>  Washington State Procurement Technical Assistance Centers  <http://www.washingtonptac.org/> | | **Assumptions / Pre-requisites / Dependencies:**  Assumptions: Assume that merely providing definitions for small businesses, mini-businesses, and micro-businesses is not sufficient for meeting procurement goals with the defined categories of small businesses.  Pre-Requisites: Must be able to verify vendors are what they claim to be (small, micro, mini, women etc). Vendor lists need to be readily available on line (preferably in WEBS). Vendors need to be notified they must update their registration to identify they are MWBE/Small/Micro/Mini/WA owned so they are easily identifiable in the system.  Dependencies: A better system to cross reference certified categories of diverse and small businesses to state purchases is needed, or enhancement/merging of current statewide systems to assist in reporting the increases in small business purchasing by agencies. Tracking could prove difficult in agencies where the purchasing is decentralized with many staff using Purchasing Cards. P-Card Custodians would need training on new guidelines/opportunities for small business purchasing. | | **Discussion of anticipated benefits:**  This could make awarding contracts or orders to small, micro, mini (etc) vendors much easier and would result in utilizing them more at the agency level. This could be a huge savings of resource time for procurement staff being able to buy direct, or if competition is required to have a smaller group of vendors participating/bidding.  These would be optional procurement practices and not mandatory. Agencies could decide what percentage of state funded purchases would be set aside specifically for small/micro/mini (etc) participation or notification of bidding opportunities.  Agencies could establish better communication and rapport with small/mini/micro/veteran vendors by conducting direct buys rather than requiring them to bid against much larger more established vendors.  This would be a win/win situation for both the state (increasing purchasing from small businesses as required in Chapter 43.19.725/727 RCW) and for the small business community. This could also assist agencies to meet the recommendations of Chapter 43.60.A.200 RCW to award 3% of non-competitive contracts to veteran owned businesses. | | **Discussion of anticipated concerns:**  Favoritism could be a problem and hard to control especially in agencies where purchasing is decentralized. Not certain WEBS could be used as fully as would be needed to certify and track the vendors. Currently there is no “certification” for small, micro, or mini vendors. The bill is inconsistent in the definitions of small, micro and mini businesses. Small is identified as an “in-state business”, micro and mini are identified as “any business entity” under specified gross annual revenues. Could be claims of unfairness from larger vendors in not receiving business from the state for procurements going directly to, or set aside specifically for small business vendors. | | **List of alternate approaches:**  Substitute Federal Small Business Administration Certified Firms for State definitions for categories of small businesses and track and report as best we can cross referencing these vendors to state purchasing data.  Continue to encourage state purchasing staff to award contracts and orders to small, micro, mini (etc) vendors as much as possible. Conduct workshops for staff to help increase purchasing from small, micro, and mini (etc) vendors.  Have better incentives for utilizing small, micro, mini (etc) vendors, such as a decrease in agency fees by DES if certain goals of awarding to small, micro, mini (etc) vendors are met. | |

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| Small Business Work Group  Identify and Disclose Bidder Information To Promote Sub-contracting With Small Businesses Recommendation |
| |  | | --- | | **2SHB2452 Reference for Recommendation:**  **NEW SECTION Sec. 2.(4)(14)(19)(20)(21) DEFINITIONS**  **NEW SECTION Sec. 10.(6) DIRECTOR’S DUTIES AND RESPONSIBILITIES REGARDING PROCUREMENT**  **Sec. 26. (1)(3)(4) RCW 43.19.725 and 2011 c 358 s 2**  **Sec. 27.(1)(2)(3) RCW 43.19.727 and 2011 c 358 s 3** | | **Primary Recommendation 14**  **Diverse Businesses Disclosure**  At a minimum, to enhance partnerships and communication, we should adopt the following language in government bids:  In order to protect the integrity of the contracting process, which is a vital state interest, responses will not be disclosed until after award and signing of a contract. It is an agency’s duty to conduct the state's business in such a way as to protect the public and develop specific strategies to meaningfully involve small business on specific projects.  Many of our most innovative and promising projects include partnerships that involve a small business(s).           In order to so protect, the Agency will not disclose the content of any responses to the Request for Information (RFI) and/or any Request for Proposal (RFP) before a contract is signed.  This will ensure fair competition without undue advantage to any bidder leading to private gain and public loss.           In order to promote small business involvement, enhance partnerships and communication, the name of respondents to the Request for Information (RFI), any resulting Request for Proposal (RFP) will be disclosed and/or name of the firms who submit a letter of intent. | | **References Supporting Primary Recommendation (Other states, professional journals, academic research, etc.)** | | **Assumptions / Pre-requisites / Dependencies:**  Assumptions: Assume small businesses will want to know who they could partner with and other businesses could learn of small business interest in a particular line of state business under solicitation.  Pre-Requisites: This may require a reasonable strategy for making this information known.  Dependencies: This may require a modification to WEBS or other state system for providing notice or for providing access to this information. | | **Discussion of anticipated benefits:**  Posting the names and status of interested vendors could promote recruitment of small and diverse suppliers where none are included in the initial solicitation response. | | **Discussion of anticipated concerns:**  Care would need to be taken so as not to cause vendors to presume vendor status by the posting, e.g. if only responsive bidders are listed, vendors could surmise who was non-responsive, etc. | | **List of alternate approaches:**  Make small business or diverse business participation a part of the solicitation minimum responsiveness criteria in order to actively promote socio-economic goal achievement and inclusion for small and diverse suppliers. | |

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| Small Business Work Group  Establish A Data Standard for Identifying Small Businesses Recommendation |
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| Information Technology Work Group  Recommendations |
| 2SHB2452 References:  New Section 10 (3) Establish procurement processes for information technology goods and services, using technology standards and policies established by the office of the chief information officer under chapter 43.41A18 RCW; |
| |  | | --- | | **Procurement Reform – IT Workgroup Recommendations** |   Below is a summary of the IT Procurement Reform Workgroup discussed in regards to issues, problems and barriers in the state’s current IT procurement process, processes that the group would like to see continued, recommendations on how processes or requirement should be changed. Items listed as research are just a sample of the information obtained and should not be considered a complete list of all research materials.   1. Basic definition of IT:   Recommended #1: Definition: The devices, hardware, software, infrastructure, systems and services whose primary purpose is the creation, transmission, and storage of data.  Background discussion: What’s NOT considered as information technology?  Most everything today has integrated circuitry, built-in computing, and some IP addresses… for example, automobiles, refrigerators, appliances, office products etc. With these examples in mind, we propose the exclusion of such traditional items such as copy machines, printers, diagnostic and therapeutic devises, telephone handsets and more. IT does not include any equipment that contains embedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, is not information technology.  Assumption(s): Definition of IT used in procurement reform will be the same or similar to the definition used by the OCIO. The group believes it is essential that DES, in developing the requirements/best practices for IT procurement be in sync with the requirements/policies being developed by the OCIO.  Research: Many sources were reviewed to develop the proposed definition   1. Pre-procurement process.   Recommendation #1: Agencies need to be encouraged to do market research, which includes speaking with vendors about current products and trends, and participating in vendor demonstrations of existing and future products.  Recommendation #2: Best practices on pre-procurement activities should be put in place. Best practices/guidance on pre-procurement research should include information on the following topics:   * Market research, including consultation with independent research organizations. * Discussions with similarly situated public or private entities who have procured similar products/services. * Meetings with vendors, which may include demonstrations of products. Discussions with vendors can help determine the size of the market and capability of the vendors to deliver a particular product or service and help the state design requirements that vendors are capable of meeting. State staff should be mindful of the broad public disclosure obligations imposed by Washington law and be mindful that records of such meetings may be disclosed under the Public Records Act.  Vendor meetings should be conducted in advance of any formal RFP process. * Publication of a Request for Information (RFI) to solicit information using a structured format and process.  A RFI is not an acquisition vehicle but can be a useful information-gathering tool.   Recommendation #2: Best practices on how to plan an IT procurement should include pre-procurement activities as a necessary step in the process. Pre-procurement activities should be scheduled into the project, should include contract, business and IT staff from the beginning.  Background: For many reasons, there is reluctance on the part of many employees to engage in open dialogue with vendors. A Request for Information is a valuable tool for seeking information, but is not the only tool. What are the different methods for obtaining information before the acquisition process? What other resources are available and can/should be used. How and when should these methods be used? What guidance should be put in place to counter the misunderstanding that employees cannot speak with vendors prior to an agency issuing a solicitation?  Assumption(s): Training will include modules on pre-procurement activities.  Research: Virginia Information Technology Agency, Acquisition Direction Advisory   1. Research and development. Processes should be put in place to support research and development activities. This process should be more flexible for the agencies, but appropriate controls (criteria) need to be in place to ensure it is not misused. (Also see 13. Strategic Partnerships for R&D pilot agreement recommendations.)   Recommendation #1: Best practices/guidance/models on research and development activities should be put in place. These should include the following:   * Short term contracts to test products * Partnering with a vendor to explore new products or services to solve a problem * Hosting a site where agencies can share information and research on products, vendors, problems and proposed solutions * Developing a fair evaluation process/rate system to alert others about products, vendors or solutions.   Recommendation #2: If agencies want to agree to click thru agreements, best practices should be put in place to help agencies develop their own policies on who can enter into the agreement, when, how, etc.  Background discussion: The current process does not provide the incentive or flexibility to allow for research and development of IT products and solutions.  Assumption(s):  Research:   1. Risk Assessment Factors. Develop a risk assessment matrix that includes the factors that are relevant to how we procure a product or service and what contract terms can or should be included in the final agreement.   Recommendation #1: The risk matrix should be in sync with both the umbrella risk matrix being developed for procurement reform as a whole, and the OCIO risk matrix used to determine IT project oversight.  Background discussion: Developing a procurement plan, procurement process and contract terms and conditions by using a risk matrix to assess IT procurements and projects will better focus resources where it is needed and will help in the development of the best procurement process. This has been missing in IT procurements.  Assumption(s): We can synchronize the IT risk matrix with the work being done by the OCIO.  Research: Georgia   1. What constitutes a “competitive process”? Can we turn the principles developed for a competitive process into different types of models that can be used for an IT acquisition? Can the state use a model where no written acquisition documents are issued (for example no written document containing the acquisition requirements or how a vendor will be selected) but there is documented justification from the decision maker on how the selection was made? How should a competitive process be documented to ensure it was open, fair, transparent and truly competitive? Can a risk matrix be developed that agencies can use to determine which model process to use for any acquisition based on other key factors such as risk, rather than price?   Recommendation #1: Issue guidance on how you determine if a process is competitive. Start with the following; A process is competitive if it includes:   * Information to vendors * Clear specifications and requirements * Evaluations based on the specifications * Reasonable/adequate time for vendors to respond to inquiry * Unbiased evaluators * Everyone has access to the same information * Process has one coordinator to direct the process   Recommendation #2: Model processes should be developed along with guidance on how and when to use the model. Model processes include:   * Rolling process that allows prequalified vendor lists to be kept up-to-date in regards to who is included, what is included, and pricing * For master and convenience contracts, you can keep a procurement open and provide vendors the ability to submit proposals throughout the year, or at given times during the year. * Process that includes a Best and Final Offer (BAFO) process as an option * A two tiered sealed bid process, where the sealed bid allows you to evaluate and narrow the field and the second tier would allow you to have new bids on price or other requirements on a smaller subset of the bidders. * Reverse auction process   Background discussion: Currently, there is only one or two methods that can be used as a competitive process. With procurement reform, we are not limited to these methods, but may develop as many methods as we can come up with to use for obtaining products and services through competition.  Recommendation #3: The state currently engages in cooperative purchasing with other states and organizations. A list of cooperative purchasing options that meet the state’s requirements should be developed by DES and maintained so that other agencies will be able to avail themselves of these contracts.  Assumption(s):  Research: Other states and local governments   1. Advertisement and notification of procurement opportunities. Develop clear requirements/guidelines be in regards to how we make sure vendors are aware of state procurement opportunities. How do we balance (or should we balance) more detailed categorization verses ease of categorizing /finding applicable procurements?   Recommendation #1: A single portal for posting all notifications should be developed. This portal should allow for ease of use, and should not require user registration.  Recommendation #2: Notifications do not have to go to every possible vendor in the arena. Targeted notifications should satisfy advertisement requirement, but guidance should be provided for this more limited notice.  Recommendation #3: Standards for length of notice should include a minimum of 3 to 5 days, depending on the procurement.  Background discussion: Currently there are different notice and advertisement requirements depending on what you are procuring. The requirements include a number of steps that may no longer be the most effective or efficient for either agencies or vendors.  Assumption(s): We will get vendor and newspaper input on any recommendation for notice and advertising requirements.  Research:   1. Public Disclosure issues. This topic includes the need to examine our current policy towards Nondisclosure Agreements.   Recommendation #1: Guidance should be developed on when and how to use Nondisclosure agreements for proprietary information.  Background discussion:  Assumption(s):  Research:   1. Prequalified vendors.    1. It is convenient to have prequalified vendors for services that are commonly used by agencies. Issues to address in regards to having and maintaining prequalified vendors include: categories provided, length of contracts and number of renewal options, how to keep pricing and services up-to-date.    2. The current ITPS contracts expire June 30, 2013. All categories will need to be evaluated as to whether to continue and then re-bid and whether additional categories need to be added. How do we address vendor noncompliance issues more quickly?   Recommendation #1: Provide alternative processes for selecting prequalified vendor list to allow for addition or removal of categories and vendors and does not lock us into pricing in markets where price is volatile. See rolling process included in model competitive processes in 5. above.  Recommendation #2: Develop a process where agencies can take advantage of other agencies contracts and prequalified vendors list.  Recommendation #3: Develop training to change perspective on what and how to use master contracts. These are contracts that satisfy the competitive process requirement, but pricing is a ceiling not the floor. Agencies need to learn about the ability and necessity of negotiating price when using a master contract or prequalified vendor agreement.  Background discussion: Agencies can often get a better deal than that included in a master contract or prequalified vendor contract, but agencies do not understand that they need to negotiate with the vendor to obtain that better deal. Sometimes, an agency gets a good deal through its own procurement and it would save another agency time and resources if there could be a sharing of that contract instead of requiring the agency to develop its own procurement.  Assumption(s):  Research:   1. Hardware acquisitions. Develop prequalified list of vendors for hardware purchases. This is an effective and efficient service for agencies. The major issues in regards to prequalified vendors for hardware are how to keep both the available products and the pricing current with agencies’ future needs and future markets. Recommendations above in number 8 also apply here.   Recommendation #1: Use resellers when there is value added. Provide guidance/best practices on when and how to use resellers.  Recommendation #2: Develop process and best practices on how to keep these contracts fresh, similar to prequalified vendor contracts.  Recommendation #3: Explore ability to prepay maintenance 5 years in advance, as now authorized for higher ed. In exploring this option, the following should be included:   * Develop one definition for “maintenance” * Model terms for termination and refund of any prepayment   Background discussion: Maintaining master contracts for hardware is a DES service that agencies want continued. But these contracts need to be kept up-to-date. Agencies can often get better pricing on individual deals.  Assumption(s):  Research:   1. Software Acquisitions.    1. Software as a service. Develop additional guidance for this new service.   Recommendation #1: Software is no longer one category but should be divided into four separate categories as follows:   * Small/low risk software acquisitions that include standard off the shelf software products * Medium risk software acquisitions that would include niche/domain specific software * Large risk software acquisitions that would include enterprise software systems * Software as a service   Recommendation #2: Guidance/best practices should be developed for each of the software categories, as guidance differs depending on what you are procuring.  Background discussion: Software has become a broader more complex environment for procurement. One size fits all no longer can apply to these types of procurements. Guidance needs to be more tailored to the particular category of software being procured.  Assumption(s):  Research:   1. Price negotiations. Develop and provide guidance for best methods for securing best price alternatives; best and final offer (BAFO), better price negotiation skills and strategies, activities that can take place in the pre-procurement process stage.   Background discussion:  Assumption(s):  Research: University of Texas at El Paso, Government website   1. Training. There was consensus that an additional course of training needs to be developed for those engaged in the procurement of IT goods and services.   Recommendation #1: IT procurement/contract training should be included in the new basic procurement/contract training program. The goal is to make students aware of the issues related to IT procurement/contracts but would not be intended to prepare them to conduct these procurements or write/negotiate IT contracts.  Recommendation #2: IT procurement/contract training should be a separate, advanced training requirement that has an outcome of certification to conduct IT procurements and write/negotiate IT contracts. Staff who do not hold this certificate would not be authorized to do this work.  Recommendation #3: Training should include modules where IT, business and contracts staff all attend the same class at the same time. These modules should allow for interaction between the staff members.   * 1. What topics should be included in that training course?      1. Performance based contracting. Agencies will need help and guidance on how to develop performance measures for contracts.   Background discussion:  Assumption(s):  Research:   1. Strategic Partnerships. Allow and expand the use and possible outcomes of “strategic partnerships” – may want to rename these as well.   Recommendation #1: There should be models/guidance/best practices on how to conduct trials, beta testing agreements and proof of concept agreements that would include:   * No cost to the agency * Minimum time period * A maximum time period not to exceed one year * What happens after the project is over. Your plan should be developed prior to starting the project but may be modified depending on what you learn during the project. * The need for and how to develop evaluation criteria to determine whether the pilot was a success. * The need for and how to develop the roles and responsibilities of all the players, both agency and vendor staff, during the pilot.   Background discussion: There was consensus that this type of tool is valuable and should be maintained. However we should review the tool and make recommendations on changes that would make this tool for effective for agencies to use.  Assumption(s):  Research:   1. Contract issues. Guidance should be developed on the following topics; how to select the contract term and the number of renewal options, how to protect the state from volatility in prices, how to reduce risk in markets with a volatility in products and vendors. Should the terms and conditions that should be used be based on the risk profile for the acquisition?   Background discussion:  Assumption(s):  Research:   1. The 80/20 view:   Based on the financials, 80% of funds are used to purchase hardware, commodity software, telephony, voice and data networks, email and maintenance.  Recommendation #1: For the 80%: simplified RFQQ’s, VARS, flexible and easy purchasing rules should be promulgated, e.g., waive debriefing and protests on purchases below $100,000, waive posting of sole source on WEBS for contracts valued under $100K, and posting above $100K be limited to state funds only. Provide for an increase or the establishment of a direct buy limit in the range of $20K.  Recommendation #2: For the 20%: large projects and implementations that carry high enterprise risk, hosted systems and cloud services require a transparent and well documented procurement methodology. 20% is spent on systems and services such as SAP, Oracle, and integrators for large software development projects….  Recommendation #3: Define Major Project  A definition of a major project would include the following:   * Large scale enterprise, business and administrative IT projects that are significant in cost, and complexity * A new initiative, an in house development, an operational system with the following characteristics: projected life cycle costs > $10M or projected capital investment > $5M; high risk rating   Background discussion:   * Assumption(s): The definition would sync up with the definition used by the OCIO. <http://www.ofm.wa.gov/budget/instructions/operating/2013_15/2013-15_instructions.pdf>   + Chapter 12 Statewide Enterprise Approach for Information Technology Operation and Investment (Major Project Defined)   OCIO Definition of Major Project  1. Approval by the OCIO or the TSB is required for IT investments that meet any of the following criteria: 1.1. The investment constitutes a replacement of, or major enhancement to, a Mission Critical System.  1.2. A governmental authorizing body (Governor, Washington State Legislature, US Congress, federal agencies, etc.) requires that the agency implement the proposed investment.  1.3. The OCIO determines the investment does not align with the State Technology Strategies in effect at the time of submission for approval. The State Technology Strategies can be found at http://ofm.wa.gov/ocio/technology\_strategy\_022312.pdf.  1.4. The design, development, and implementation portion of the investment crosses a biennial boundary for funding purposes, regardless of overall investment duration.  1.5. The investment duration for design, development, and implementation exceeds 12 months, regardless of cost.  1.6. The investment qualifies as a financial or administrative system and exceeds six (6) staff months (agency plus vendor) of effort. Refer to Section 80.30.88 of the State Administrative and Accounting Manual (SAAM) for more information on financial and administrative systems.  1.7. The investment causes one or more additional agencies to make major enhancements or modifications to an existing system or process.  1.8. The investment causes significant changes to the way the public conducts business electronically with the agency. (NOTE: this does not include modifications to static information presented on a Web site).  1.9. The investment design, development, and implementation cost plus six (6) years of maintenance exceed the amount for the agency in the Agency Investment Lifecycle Cost table found at http://ofm.wa.gov/ocio/policies/documents/agy\_invest\_life\_cost.pdf.  An IT investment that meets any of these criteria, as well as an investment previously assessed as Level 2 or Level 3, is a Major Project.  Research:   1. Miscellaneous Issues   The following are issues that the group has not yet discussed but may have recommendations after the topic is reviewed by the workgroup.   * Protest procedures – Should IT procurements have a different protest procedure or additional steps related solely to IT procurements? * Guidance on when and how to follow WTO rules in procurements |

1. NEW SECTION. Sec. 4. RELEASE OF BID DOCUMENTS. (1) Records related to state procurements are public records subject to disclosure to the extent provided in chapter 42.56 RCW except as provided in subsection (2) of this section. (2) Bid submissions and bid evaluations are exempt from disclosure until the agency announces the apparent successful bidder. [↑](#endnote-ref-1)
2. (1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (6) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. [↑](#endnote-ref-2)
3. *“…*Sometimes OSP will include language in the solicitation indicating that the apparent successful bidder’s proposed goods will be identified in the notice of intent to award letter allowing other bidders the opportunity to scrutinize specificationcompliance. If no other bidder is able to successfully challenge specification compliance, we can then proceed with the award with confidence (at least with regard to specification compliance). If otherwise and it was discovered after the award has been made that the successful vendor did not conform to bid specifications, then, the integrity of the bid process is compromised as pricing information will have been disclosed. By utilizing this process, bidders are less likely to try to dupe the state with regard to specification compliance. Bidders have also historically supported this methodology as it keeps everyone honest. Accordingly, we may want our recommendations to allow for this practice. [↑](#endnote-ref-3)