# Sample language and examples for Mercury Environmental Preference (Mercury EP)

# -For convenience, This Includes PCBs language and examples, if necessary, as well. See the [PCBs Desk Aid](https://des.wa.gov/sites/default/files/public/documents/About/Procurement_reform/training/CourseResourcesJobAids/PCB/PCBsPreferenceDeskAid.pdf?=3978a) for more PCBs information-

## **Authorizing Sources:**

* [Mercury Free Products Purchasing Preference Policy](https://www.google.com/url?client=internal-uds-cse&cx=006237070161275942077:izpulw5roim&q=https://des.wa.gov/sites/default/files/public/documents/About/Procurement_reform/Policies/Draft/2019MayWkshp/EP-Mercury.docx%3F%3Db2dae&sa=U&ved=2ahUKEwjZg7GM0fbjAhXCsJ4KHYtBDHYQFjAAegQIAhAB&usg=AOvVaw15gGxYb1N8XYEPAYhI9XDX)
* State Law [RCW 70.95M.060](https://app.leg.wa.gov/RCW/default.aspx?cite=70.95M.060)
* State Law [RCW 70.95M.030](https://app.leg.wa.gov/RCW/default.aspx?cite=70.95M.030)
* State Law [RCW 70.95M.080](https://app.leg.wa.gov/RCW/default.aspx?cite=70.95M.080)
* Executive Order [Executive Order 04-01](https://www.digitalarchives.wa.gov/GovernorLocke/eo/eo_04-01.htm)
* Executive Order [Executive Order 18-01](https://www.governor.wa.gov/sites/default/files/exe_order/18-01%20SEEP%20Executive%20Order%20%28tmp%29.pdf)

**About Mercury:**

**What is Mercury?**

Mercury, arsenic, and lead are found naturally in the earth, but just because they’re natural chemical elements doesn’t mean they’re harmless. They are heavy metals with a long history of industrial and personal use—and just as long of a history of harming human health.

**How are we exposed?**

* Mercury is in our air from the combustion of diesel, jet fuel, and heating oil. It deposits on land and water, then concentrates in the food chain.
* Mercury is also emitted by coal-burning power plants, and by manufacturers, oil refineries, medical waste disposal facilities, dental offices, and cremation facilities.
* When mercury gets into water, bacteria convert it to toxic methylmercury, which builds up in fish. When we eat fish that contain mercury, it tags along and settles in our bodies.
* Mercury is in many consumer products, including:  fluorescent light bulbs, electrical fixtures, auto switches, thermostats, medical equipment, and dental amalgam fillings. Mercury is also used in thermometers, although this use in many areas is being phased out in favor of non-mercury digital thermometers.

**Why should we be concerned?**

Mercury exacts its most devastating toll on the developing brain.

* Children with above-average mercury exposures have learning difficulties.
* In instances of high exposure there may be risks of:
  + blindness and deafness
  + brain damage
  + digestive problems
  + kidney damage
  + lack of coordination
  + mental retardation

**What can government and industry do?**

Only relatively recently have people begun to take action to curtail the use of mercury.

A number of states, including Washington and Oregon, have passed legislation to address mercury use in products such as thermometers and thermostats. The Washington State Department of Ecology credits the legislation and its action plan with reducing mercury emissions by 14,000 pounds between 2003 and 2008. Major sources such as coal burning continue.

King County has had tremendous success in reducing mercury pollution from dental offices by cracking down on dentists to keep mercury out of their wastewater. Mercury in dental offices comes from amalgam fillings, which are about half mercury by weight. State law requires dentists to use devices called separators, which remove mercury from wastewater, but compliance in the past has been poor. By conducting inspections and threatening fines, King County was able to achieve 97% compliance and a 50% reduction in mercury in wastewater between 2000 and 2003 (King County 2005).

**What does this mean to me as a purchaser for Washington State?**

DES has created a Mercury [Environmental Preference (EP) policy](https://www.google.com/url?client=internal-uds-cse&cx=006237070161275942077:izpulw5roim&q=https://des.wa.gov/sites/default/files/public/documents/About/Procurement_reform/Policies/Draft/2019MayWkshp/EP-Mercury.docx%3F%3Db2dae&sa=U&ved=2ahUKEwjZg7GM0fbjAhXCsJ4KHYtBDHYQFjAAegQIAhAB&usg=AOvVaw15gGxYb1N8XYEPAYhI9XDX) as well as this Environmental desk aid. Just in case the [PCBs Risk calculator](https://des.wa.gov/sites/default/files/public/documents/About/Procurement_reform/training/NonStateEmp/PCB/RiskCalculator/story_html5.html) indicates your purchase is also at risk for PCBs, that sample language is also included. The sample language and examples of providing a Mercury Environmental preference follow:

## **Sample Language**

**Sample Mercury Purpose Statement:**

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

**Sample PCBs Purpose Statement:**

Polychlorinated biphenyls, commonly known as PCBs, have adverse effects on human health and the environment. Accordingly, the State of Washington through its procurements of goods is trying to minimize the purchase of products with PCBS and to incentive its vendors to sell products and products in packaging without them.

**Sample Mercury Evaluation Clause 1:**

Pursuant to RCW XXXXX a preference of XX% (no less than 5%) will be given to any bidder who provides evidence as set forth herein, that the products in Exhibit \_\_ (cost worksheet), do not contain mercury.  In the event that no products contain zero mercury, a preference of XX% (no less than 5%) will be given to bidders who provide evidence that the products identified for mercury testing in Exhibit \_, (title of exhibit) contain the least amount of mercury. The products that will be identified for mercury testing are all products contained in the [Interstate Mercury Education and Reduction Clearinghouse Mercury-Added Products Database](https://imerc.newmoa.org/publicsearch/NEWMOA_IMERC.aspx#/CustomizedSearch).

**Sample Mercury Evaluation Clause 2:**

A preference of XX% (no less than 5%) will be given to bidders who provide evidence that the products identified for potential mercury in Exhibit \_, (title of exhibit) pursuant to RCW XX.XX.XX that do not contain mercury.  In the event that no products contain zero mercury, a preference of XX% (no less than 5%) will be given to bidders who provide evidence that the identified products contain the least amount of mercury. The products that will be identified for mercury testing are all products contained in the [Interstate Mercury Education and Reduction Clearinghouse Mercury-Added Products Database](https://imerc.newmoa.org/publicsearch/NEWMOA_IMERC.aspx#/CustomizedSearch).

**Sample PCBs Evaluation Clause 1:**

Pursuant to RCW [39.26.280](http://app.leg.wa.gov/rcw/default.aspx?cite=39.26.280) a preference of XX% (no less than 5%) will be given to any bidder who provides evidence as set forth herein, that the products and/or product packaging in Exhibit \_\_ (cost worksheet), do not contain PCBs.  In the event products and/or product packaging are tested, and no products or product packaging contain zero PCBs, a preference of XX% (no less than 5%) will be given to bidders who provide evidence that the products and/or product packaging, identified for PCBS testing in Exhibit \_, (title of exhibit) contain the least amount of PCBs. The method for testing products and/or packaging for PCBs must be per the U.S. Environmental Protection Agency (EPA) Analytical Method 1668c.

**Sample PCBs Evaluation Clause 2:**

A preference of XX% (no less than 5%) will be given to bidders who provide evidence that the products and/or product packaging, identified for PCBS testing in Exhibit \_, (title of exhibit) pursuant to RCW 39.26.280 that do not contain PCBs.  In the event products and/or product packaging are tested, and no products or product packaging contain zero PCBs, a preference of XX% (no less than 5%) will be given to bidders who provide evidence that the products and/or product packaging, identified for PCBS testing in Exhibit \_, (title of exhibit) contain the least amount of PCBs. The method for testing products and/or packaging for PCBs must be per the U.S. Environmental Protection Agency (EPA) Analytical Method 1668c.

**Sample Mercury contract warranty language:**

Contractor Preference – Product(s) Do Not Contain mercury. Contractor represents and warrants that, during the term of this Contract, for any product(s) for which Contractor sought and was awarded a purchasing preference pursuant to RCW xx.xx.xx and Washington State Procurement Policy \*\*\*\*\*, such product(s) shall meet or exceed the testing limitations that enabled Contractor to be awarded such preference. Notwithstanding any provision to the contrary, upon breach of warranty and Contractor’s failure to provide satisfactory evidence of compliance within thirty (30) days, Agency may suspend or terminate this Contract. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys’ fees and costs.

**Sample PCBs contract warranty language:**

Contractor Preference – Product(s) Do Not Contain PCBs. Contractor represents and warrants that, during the term of this Contract, for any product(s) or product(s) in packaging for which Contractor sought and was awarded a purchasing preference pursuant to RCW 39.26.280 and Washington State Procurement Policy \*\*\*\*\*, such product(s) or product(s) in packaging shall meet or exceed the testing limitations that enabled Contractor to be awarded such preference. Notwithstanding any provision to the contrary, upon breach of warranty and Contractor’s failure to provide satisfactory evidence of compliance within thirty (30) days, Agency may suspend or terminate this Contract. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys’ fees and costs.

Contractor Certification Mercury Preference

Washington State Solicitation \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dated\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Pursuant to RCW XX.XX.XX, the Washington State (Agency Name) is required to provide a preference to a bidder that provides products that do not contain mercury.

I hereby certify, on behalf of the firm identified below, as follows (check one):

* Not applying for the mercury preference.

Or

* The mercury levels of ALL identified products in the above solicitation, are attached to this certification.

I hereby certify, under penalty of perjury under the laws of the State of Washington, that the certifications herein are true and correct and that I am authorized to make these certifications on behalf of the firm listed herein.

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| Firm Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name of Contractor/Bidder – Print full legal entity name of firm | |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature of authorized person  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title of person signing certificate  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Print Name of person making certifications for firm  Place: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Print city and state where signed |

Contractor Certification PCBs Preference

Washington State Solicitation \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dated\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Pursuant to RCW 39.26.280, the Washington State (Agency Name) is required to provide a preference to a bidder that provides products or products in packaging that do not contain Polychlorinated Biphenyls (PCBs).

I hereby certify, on behalf of the firm identified below, as follows (check one):

* Not applying for the PCBS Preference.

Or

* ALL Products have been tested for Polychlorinated Biphenyls. All product(s) identified in the above solicitation, have been tested within the previous 365 days, were performed by an independent, third party laboratory using Environmental Protection Agency (EPA) Analytical Method 1668c. The test results are attached.

Or

* All product(s) identified below, have been tested within the previous 365 days, were performed by an independent, third party laboratory using Environmental Protection Agency (EPA) Analytical Method 1668c. The test results are attached.

Product \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Product\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\*Add Additional lines if necessary

I hereby certify, under penalty of perjury under the laws of the State of Washington, that the certifications herein are true and correct and that I am authorized to make these certifications on behalf of the firm listed herein.

|  |  |
| --- | --- |
| Firm Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name of Contractor/Bidder – Print full legal entity name of firm | |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature of authorized person  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title of person signing certificate  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Print Name of person making certifications for firm  Place: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Print city and state where signed |

## **Examples for Solicitation**

For more examples, access the [PCBs Desk Aid](https://des.wa.gov/sites/default/files/public/documents/About/Procurement_reform/training/CourseResourcesJobAids/PCB/PCBsPreferenceDeskAid.pdf?=698a2).

