# Sample language and examples for PFAs & Procurement

# -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:**

RCW 70.75A.020

SB 6413  
c 286, Laws of 2018

RCW 70.95G.070

ESHB 2658  
c 138, Laws of 2018

There is currently no policy for PFAs or PFCs, please check back to this desk aid link for updates.

**About Products containing PFAs/PFCs:**

**What are PFAs?**

Per- and polyfluoroalkyl substances (PFAS) are a group of man-made chemicals that includes PFOA, PFOS, GenX, and many other chemicals. PFAS have been manufactured and used in a variety of industries around the globe, including in the United States since the 1940s. PFOA and PFOS have been the most extensively produced and studied of these chemicals. Both chemicals are very persistent in the environment and in the human body – meaning they don’t break down and they can accumulate over time. There is evidence that exposure to PFAS can lead to adverse human health effects.

**How are we exposed?**

PFAS can be found in:

* **Food** packaged in PFAS-containing materials, processed with equipment that used PFAS, or grown in PFAS-contaminated soil or water.
* **Commercial household products**, including stain- and water-repellent fabrics, nonstick products (e.g., Teflon), polishes, waxes, paints, cleaning products, and fire-fighting foams (a major source of groundwater contamination at airports and military bases where firefighting training occurs).
* **Workplace**, including production facilities or industries (e.g., chrome plating, electronics manufacturing or oil recovery) that use PFAS.
* **Drinking water**, typically localized and associated with a specific facility (e.g., manufacturer, landfill, wastewater treatment plant, firefighter training facility).
* **Living organisms**, including fish, animals and humans, where PFAS have the ability to build up and persist over time.

**Why should we be concerned?**

PFAS are found in a wide range of consumer products that people use daily such as cookware, pizza boxes and stain repellants. Most people have been exposed to PFAS. Certain PFAS can accumulate and stay in the human body for long periods of time. There is evidence that exposure to PFAS can lead to adverse health outcomes in humans. The most-studied PFAS chemicals are PFOA and PFOS. Studies indicate that PFOA and PFOS can cause reproductive and developmental, liver and kidney, and immunological effects in laboratory animals. Both chemicals have caused tumors in animals. The most consistent findings are increased cholesterol levels among exposed populations, with more limited findings related to:

* low infant birth weights,
* effects on the immune system,
* cancer (for PFOA), and
* thyroid hormone disruption (for PFOS).

**What can government and industry do?**

The Federal EPA is committed to supporting states, tribes and local communities in addressing challenges with PFAS.  As a part of this effort, EPA is taking action to identify solutions to address PFAS in the environment.

Washington State Department of Ecology and Department of Enterprise Services are committed to supporting all of Washington State agencies, boards and commissions, higher education entities, tribes, and local communities in addressing challenges with PFAS.

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

## **If you are purchasing off of a Master Contract, you can know that reducing PFAs/PFCs has already been considered.**

## **If you aren’t purchasing food packaging or Firefighting equipment, you don’t need to do anything regarding PFAs.**

## **If you are purchasing Food Packaging do these 3 things:**

In the market research process of your procurement, read the law and check the department of ecology findings in the Washington State Register on whether safer alternatives are available. As always, use your own reasonable judgment and check in with agency leadership when weighing whether or not your solicitation should include language regarding PFAs. Optional sample language is available in this document. For each procurement and renewal, check for updates.

1. **Market Research:** As part of your market research check the department of ecology findings in the Washington State Register on whether safer alternatives are available.
2. **Read the Law:** [RCW 70.95G.070](https://app.leg.wa.gov/RCW/default.aspx?cite=70.95G.070)
3. **Include language about PFAs in your solicitation and contract if you deem appropriate:** See optional sample language below.

## **If you are purchasing Firefighting foam or firefighting personal protective equipment Do these 3 Things:**

In the market research process of your procurement, read the law and check the department of ecology findings in the Washington State Register on whether safer alternatives are available. As always, use your own reasonable judgment and check in with agency leadership when weighing whether or not your solicitation should include language regarding PFAs. Optional sample language is available in this document. For each procurement, check this desk aid for updates.

1. **Market Research:** As part of your market research check with the department of ecology whether safer alternatives are available.
2. **Read the Law:** [70.75A.050](http://app.leg.wa.gov/RCW/default.aspx?cite=70.75A.050)
3. **Include language about PFAs in your solicitation and contract if you deem appropriate:** See optional sample language below.

## **Sample Language**

**Optional Sample PFAs Purpose Statement (to go in your solicitation):** Per- and polyfluoroalkyl substances (PFAS) are a group of man-made chemicals that includes PFOA, PFOS, GenX, and many other chemicals. These chemicals are very persistent in the environment and in the human body – meaning they don’t break down and they can accumulate over time. There is evidence that exposure to PFAS can lead to adverse human health effects. Accordingly, the State of Washington through its procurements of goods is trying to minimize the purchase of products with PFAs and to incentive its vendors to sell products and products in packaging without them.

**Optional Sample PFAs Evaluation Clause:**

Pursuant to RCW [70.75A](http://app.leg.wa.gov/rcw/default.aspx?cite=39.26.280) a preference of XX% will be given to any bidder who provides evidence as set forth herein, that the products in Exhibit \_\_ (cost worksheet), do not contain intentionally added PFAs.

**Optional Sample PFAs contract warranty language:**

Contractor Preference – Product(s) Do Not Contain intentionally added PFAs. 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 39.26.280, such product(s) shall not contain intentionally added PFAs. 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 Purpose Statement (only use if PCBs are a risk in this product as well):**

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 PCBs Evaluation Clause:**

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 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.

## **Sample Contractor Certification:**

Contractor Certification No Added PFAs 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 intentionally added PFAs.

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

* Not applying for the PFAs preference.

Or

* The PFAs 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).

