

Delegated Authority Policy

FREQUENTLY ASKED QUESTIONS

1. **Question:** How is delegated authority to be applied to a project that may include multiple contracts?

Answer: When an agency must enter into multiple contracts for a single project, each contract is analyzed separately to determine if the contract is within the agency's delegated authority. For example, a project requires three contracts, one each in goods, services, and IT. To determine if the agency has sufficient delegated authority, the goods contract value is compared to the agency's delegated authority for goods. A similar comparison is made for the services and IT contracts. [Revised April 5, 2019]

2. **Question:** When DES conducts a general delegated authority risk assessment, what materials does it review? Would DES share its risk assessment guidelines?

Answer: In order to determine how well an agency manages its procurement-related risks, DES risk analysts examine several sources of information, including the agency's: reported contracts; procurement audit history; requests for additional delegations of authority; requests for exemptions from sole source or procurement laws or rules; the accuracy of its WEBS reporting; the quality of its sole source filings; whether emergency filings were correctly provided to DES; agency's compliance with required procurement training; whether procurement protests were sustained; the extent of the agency's small, veteran owned, and diversity spend; compliance with Executive Order 18-03; purchases from Correctional Industries and Community Rehabilitation Programs; and compliance with environmental purchasing priorities including recycled content, electronic products, mercury and Polychlorinated Biphenyls (PCBs). The Risk Assessment review process is available in the General Delegated Authority Task #TSK-DES-090-00A. The Procurement Risk Assessment Tool is located [here](#). [Published April 5, 2019]

3. **Question:** In regards to Master Contracts what is an example of "cannot justifiably satisfy the agency's needs"?

Answer: Agencies are directed to use their discretion and good, sound judgment when making the decision to not purchase from a master contract. For example: the product available from the master contract does not meet the required performance specifications, the contractor's delivery time does not meet the agency's needs, the agency requires different terms (i.e. warranty provisions or insurance requirements), etc. In addition, all agencies have been encouraged to increase their small, veteran owned and diverse spend. If these options are not available on a master contract and an agency has identified a spend option that meets its needs and complies with all procurement rules, then the agency would be justified to purchase outside of a master contract. The reasons justifying the off contract purchase should be documented, as appropriate. [Published April 5, 2019]

4. Question: Are Client Services included in the delegated authority from DES?

Answer: Yes. Although, under RCW 39.26.125(6), client services contracts are exempt from competition, the transaction (contract) must be within the agency's delegated purchasing authority for services. Client services contracts must also comply with other DES procurement policies, standards and procedures.
[Revised April 5, 2019]

5. Question: Please provide examples of client services contracts.

Answer:

Example 1: An agency hires an optometrist to perform vision tests on children who are clients of the agency.
Analysis: "Client services" means services provided directly to agency clients. See RCW 39.26.010. This is a client services contract, because the optometrist's services are provided directly to an agency client. The contract is exempt from competition.

Example 2: An agency contracts with a community-based organization (CBO) to provide a variety of services to children aged 0-3 years old in a rural county. The contract requires the CBO to find, screen, and conduct background checks of all potential independent contractors. Qualified individuals enter into contracts with the CBO and then provide the services to the children. None of the CBO employees provide services directly to the children; rather individuals or firms hired by the CBO provide services directly to children.

Analysis: CBO Contract. The contract between the agency and the CBO is not a client services contract. The CBO does not provide direct services to any client. This contract must be competed, or a sole source approval for the contract must be sought.

Independent Contractors. The contracts between the CBO and the independent contractors are not agency contracts and are not subject to any of the provisions of RCW 39.26. Rather, they are private contracts between the CBO and their subcontractors. However, the private contracts between the CBO and their subcontractors may be subject to pass-through requirements contained in the contract between the agency and the CBO.

Example 3: Similar to the scenario in Example #2, an agency contracts with a CBO to provide a variety of services to blind persons in a major city. The contract requires the CBO to find, screen, and conduct background checks of all potential independent contractors. Qualified individuals enter into contracts with the CBO and then provide the services to the blind persons. Unlike the situation in Example #2, both the CBO's and the subcontractor's employees provide services directly to the clients.

Analysis: CBO Contract. The contract between the agency and the CBO may be a client services contract. Here, the CBO provides direct services to some of its clients.

To determine whether the CBO Contract is a client services contract, agencies must review the totality of the services provided under the CBO contract, exclusive of all subcontractors. If the majority of the CBO contract provides direct services to clients, then it is a client services contract and is exempt from competition. Otherwise, the CBO contract must be competed, or a sole source approval for the contract must be sought.

Example 3a: An agency obtains a combination of services under the terms of the CBO contract, exclusive of all subcontracts. More than 50% of these services are directly to clients.

Analysis: The CBO contract is a client services contract and is exempt from competition.

[Revised April 5, 2019]

6. Question: How do I determine what delegated authority is needed for a multi-year service contract?

Answer: Delegated authority is calculated on a per-contract basis. To determine what delegated authority is needed for a particular contract, an agency must determine the encumbrance (i.e. the year-to-year cost) of the contract. The following examples will explain the encumbrance calculation:

Example 1. Agency enters into a service contract for five years and that is negotiated to cost \$1,000,000 per year. The encumbrance is \$5,000,000 because the agency is obligated to remain in the contract for five years.

Example 2. Agency enters into a service contract for one year, with four additional one-year options, and that is negotiated to cost \$1,000,000 per year. The encumbrance is \$1,000,000, because the agency is only obligated to one year at a time, and that cost is \$1,000,000.

The following grid illustrates the differences between the two approaches:

Service Contract	Term	Annual price	Encumbrance	Required Delegated Authority
Example 1	5 years	\$1,000,000	\$5,000,000	\$5,000,000
Example 2	1 year, 4 one-year options	\$1,000,000	\$1,000,000	\$1,000,000

Agencies have discretion to determine the best value/bargain for their contracts. This question and answer illustrates that agencies can control procurement risk through structuring the duration of a contract.