# Sample language and examples for PBDEs free Environmental Preference (PBDEs 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:**

* [RCW 70.76](https://app.leg.wa.gov/rcw/default.aspx?cite=70.76)

**About PBDEs:**

**What are PDBEs?**

PBDEs, or polybrominated diphenyl ethers, are industrial toxic flame retardant chemicals used in consumer electronics, furniture, and mattresses. PBDEs are no longer produced in the U.S. but are still present in many items in our homes and elsewhere.

**How are we exposed?**

PBDEs have been widely detected in house dust as well as indoor air because they migrate out of products like furniture and electronics in our homes. Studies in the U.S., Europe, and Asia have found PBDEs in fish, meat, eggs, fruits, vegetables, and infant formula..

**Why should we be concerned?**

* PBDEs are in blood, breastmilk, and umbilical cord blood.
* Laboratory animals exposed to PBDEs show deficits in learning and memory.
* Children with higher prenatal exposure to PBDEs have been found in several studies to have lower IQ. Exposure has also been linked to hyperactivity, poor attention, and slower motor development.
* PBDEs affect thyroid hormone levels in laboratory animals.

**What can government and industry do?**

There are three common mixtures of these chemicals—penta, octa, and deca.

* Penta- and octa-BDEs were the first to be phased out, with penta the form widely used in foam for furniture and children’s products.
* Deca-BDE, previously the dominant flame retardant in television enclosures and also used on textiles, was phased out by industry after several states, including Washington, passed bans. There is no prohibition on articles containing deca coming into the U.S., though they are prohibited for sale in states with bans.

Twelve U.S. states have passed legislation to ban penta- and octa-BDEs, and four of them also banned deca-BDE. In December 2009, the only two U.S. makers of deca-BDE and its largest importer voluntarily [**agreed**](https://toxicfreefuture.org/flame-retardant-makers-agree-to-phase-out-enforceable-bans-still-needed-washington-toxics-coalition-2/) to stop producing and importing Deca for most uses by 2011, and to stop producing and importing the chemical for all uses by 2013. Despite the voluntary phaseout, a national ban is still needed to ensure the agreement is enforceable and any chemical flame retardant substitutes are safer.

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

***Make sure any and all upholstery, carpeting, and mattresses are PBDE-free.***  Thanks to California law, most furniture is now labeled regarding flame-retardant content. Check the labels when you shop:

* If the label says “CONTAINS NO ADDED FLAME RETARDANTS” that means it’s free of flame retardants.
* If label is marked with “CONTAINS ADDED FLAME RETARDANTS” that means it contains flame retardants.
* If the label says the product meets TB117 standards and has no additional information, it meets an outdated standard and is likely to contain flame retardants.

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 PPBDEs Environmental preference follow:

## **Sample Language**

**Sample PBDEs Purpose Statement:**

xxx

**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 PBDEs Evaluation Clause 1:**

xxx

**Sample PBDEs Evaluation Clause 2:**

xxx

**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 PBDEs contract warranty language:**

xxx

**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 PBDEs 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.

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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 |

## **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).

