

# Enterprise Services Policy No. POL-DES-090-00

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 separate comparison is made for the services and IT contracts. [Revised XX-XX-XXXX]

1. **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 review each agency’s application of DES procurement policies by examining several sources of information, including but not limited to 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; sole source and emergency filings record; compliance with required procurement training; sustained protests; compliance with the Supplier Diversity Policy; compliance with Executive Order 18-03; purchases from Correctional Industries and Community Rehabilitation Programs; and compliance with environmental purchasing priorities. For more information, visit the DES Risk Assessment [webpage](https://des.wa.gov/purchase/how-use-statewide-contracts/procurement-risk-assessment). [Revised XX-XX-XXXX].

1. **Question: In regard to statewide contracts (formerly known as Master Contracts; see FAQ #\_\_ for an explanation), 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 statewide contract. For example: the product available from the statewide 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 statewide 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 statewide contract. The reasons justifying the off-contract purchase must be documented, as appropriate. [Revised XX-XX-XXXX]

1. **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]

1. **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]

1. **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 contract value for the contract term (period of performance).The following examples will explain the calculation:

Example 1. An Agency has a delegated authority of $1,000,000. Agency enters into a contract for a five year term (period of performance) at a cost of $1,000,000 per year. The total contract value is $5,000,000 because the agency is obligated to remain in the contract for five years. In this example, the Agency would need to request Additional Delegated Authority.

Example 2. An Agency has a delegated authority of $1,000,000. Agency enters into a contract for one year for $1,000,000, with four additional one-year options at a cost of $1,000,000 per year. If the contract is extended, the authority limit applies to the dollar commitment for the *new* contract term (period of performance). It is not added cumulatively to the dollar commitment made in the first term. The total contract value for the contract term (period of performance) is $1,000,000, because the agency is only obligated to one year at a time, and that amount is $1,000,000. In this example, the agency would not need to request Additional Delegated Authority.

The following grid illustrates the differences between the two approaches:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Service Contract | Term | Annual contract amount | Encumbrance/Obligation | Required DelegatedAuthority |
| 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. [Revised XX-XX-XXXX].

1. **Question: How do I determine whether a contract amendment that adds to the cost of a contract is within delegated authority? When is it necessary to request additional authority?**

**Answer:** This question has several interrelated parts addressed below.

1. Dollar amounts apply to each contract term or to each purchase event.
2. If an agency has entered into a contract that is within their delegated authority but amends the contract within the contract term (performance period) to increase the contract value so it exceeds their delegated authority or Additional Delegated Authority, then the agency would need to request Additional Delegated Authority from DES. See the examples below :

Example 1: If an agency has $2,000,000 delegated authority, then they have the authority to enter into a contract with a term value of $2,000,000 or less, and execute any extension options, as long as the contract value for the extension term does not exceed $2,000,000.

Example 2. An agency has general delegated authority to acquire services in the amount of $2,000,000. Agency A contracts with contractor for $2,000,000 for services to be provided for the term of July 1, 2024, through June 30, 2025. The agency signs an amendment during the term of the contract, that adds $500,000 for services to the current contract term with the amendment, the total cost of the contract for the term of July 1, 2024 through June 30, 2025 becomes $2,500,000. Since $2,500,000 exceeds the agency’s delegated authority of $2,000,000, the agency must seek additional authority of $500,000 for this amendment.

Example 3. An agency has general delegated authority to acquire services in the amount of $2,000,000. The agency contracts with a vendor for $500,000 for services to be provided for the term of July 1, 2024, through June 30, 2025. The agency signs an amendment during the term of the contract, that adds $500,000 for services in each of the following months: September 2024 and November 2024. With the amendment, the total cost of the contract becomes $1,500,000 for the term of July 1, 2024, through June 30, 2025. Since that amount does not exceed the agency’s general delegated authority, it does not need to request additional authority for this amendment.

Example 4: If that agency has $1,000,000 delegated authority and enters into a contract with an initial term of 2 years and the contract value is $1,000,000 per year, then the initial contract term value is $2,000,000, and the agency would need to request Additional Delegated Authority from DES. However, if the agency does a short-term extension of $250,000 for 3 months, the value of the contract would be $1,250,000 and the agency would not need to request Additional Delegated Authority from DES for the extension term. [Published XX-XX-XXXX]

1. **Question:** **My agency has some contracts in which we are the recipient of the funds, but they pass-through us with some matching funds from us. If the grant dollars are more than its general delegated authority, does an agency need to request additional delegation of authority for grants?**

**Answer:** No. RCW 39.26, and DES’ related duties, apply to state agencies in the procurement of goods and services and apply only to contracts providing goods or services for an agency’s own use. It does not apply to grant agreements that are used to pass through state and/or federal funds to a grantee for the grantee’s own use. However, you may want to reach out to your AAG for your agency’s authority regarding grants. [Published XX-XX-XXXX]

1. **Question:** **Is delegated authority to procure goods or services a legal requirement that applies to an Inter-Agency Agreement (IAA)?**

**Answer:** It depends on the purpose of the IAA:

|  |  |
| --- | --- |
| **Purpose** | **Delegated authority required?** |
| Revenue generation | No |
| Resource–sharing (personnel or assets such as equipment or tools) | No |
| Goods subject to RCW 39.26 | Yes |
| Services subject to RCW 39.26 | Yes |

[Published XX-XX-XXXX]

1. **Question: But IAAs are governed by RCW 39.34, not RCW 39.26. I thought delegated authority**

**for purchasing goods or services did not apply to IAAs?**

**Answer:** IAAs do not relieve “any public agency of any obligation or responsibility imposed upon it by law.” RCW 39.34.030(5). So, the statement, “I don’t have to think about procurement rules, this is an IAA” is often incorrect. [Published XX-XX-XXXX]

1. **Question: What if I thought the procurement was going to be within my agency’s general delegated purchasing authority, but after conducting a competitive process, it will exceed the authority. Can I still submit a timely request for additional delegated purchase authority?**

**Answer:** Yes. Ideally, agencies should submit the request for Additional Delegated Authority prior to the procurement. However, after conducting a competitive solicitation, if an agency discovers that it will exceed its delegated authority, it must submit a request for additional authority to the DES Director. The request must be approved prior to executing any contract that results from the competitive solicitation. [Published XX-XX-XXXX]

1. **Question:** What should an agency do if it discovers that after a contract has been executed, its delegated authority has been exceeded.

**Answer:** Please note: DES cannot provide legal advice to agencies or make business decisions for agencies.In a situation where an executed contract exceeds delegated authority, DES recommends considering consultation with the agency’s Assistant Attorney General (AAG) for additional legal guidance and/or if there are any concerns with closing out existing contracts.

If an agency executes a contract and then discovers that in doing so, they have exceeded their delegated authority, if it is feasible, and does not jeopardize the agency’s business activities, we recommend closing out the current contracts and replacing them with new contracts through a competitive solicitation or exception as allowed by law (see [RCW 39.26.125](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fapp.leg.wa.gov%2Frcw%2Fdefault.aspx%3Fcite%3D39.26.125&data=05%7C02%7Cdavid.jorgensen%40des.wa.gov%7C820fed02bc1f432ab4cc08ddf6d421b7%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C638938113132173889%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMiIsIkFOIjoiTWFpbCIsIldUIjoyfQ%3D%3D%7C0%7C%7C%7C&sdata=yCdyIzt%2FBnUPdGxZ2u3EWK4e%2B4yFhY6b2ZSG3Dc3D1c%3D&reserved=0)). Please note: DES cannot approve additional delegated authority requests retroactively or for amendments to existing contracts that are out of compliance with the delegated authority policy.

DES also recommends documenting the compliance issue in the contract files and identifying the controls put in place to prevent a similar situation from occurring again, and any steps the agency has taken or will take to cure the situation.

1. **Question: Is a master contract different than a statewide contract?**

**Answer:** No. The term master contract is used in RCW 39.26.010(15) which states “"Master contracts" means a contract for specific goods or services, or both, that is solicited and established by the department in accordance with procurement laws and rules on behalf of and for general use by agencies as specified by the department.” However, to be proficient in the area of diversity, equity, and inclusion (DEI), DES has replaced the term “master contract” with “statewide contract.” The meaning of “statewide contract” is congruent with the definition of “master contract as stated in RCW 39.26.010(15). [Published XX-XX-XXXX]

1. **Question: What authority does DES have to enforce compliance for its procurement policies?**

**Answer:** RCW 39.26.090(1) states that the DES Director “shall: Establish overall state policies, standards, and procedures regarding the procurement of goods and services by all state agencies…” This statute provides DES with statutory authority to enforce its policies. DES also has the authority to delegate to agencies but only if agencies are in substantial compliance with overall procurement policies (RCW 39.26.090(5). [Published XX-XX-XXXX