



Enterprise Services Policy No. POL-DES-140-00

# Sole Source Contract Policy

**Applies to:** Any state office or activity of the executive branches of state government, including state agencies, departments, offices, divisions, boards, commissions, institutions of higher education as defined in [RCW 28B.10.016](#) and correctional and other types of institutions.

**Authorizing sources:**

- State Law [RCW 39.26.010](#)
- State Law [RCW 39.26.125](#)
- State Law [RCW 39.26.140](#)
- State Law [RCW 28B.10.029](#)

**Effective date:** [DATE]

**Last update:** [April 3, 2019](#)

**Sunset review date:** [5 years from effective date]

**Approved by:** \_\_\_\_\_ Tara C. Smith, Director

## Reason for Policy

This policy applies whenever an agency intends to purchase or lease goods and/or services under Chapter 39.26 RCW that are only available from a single source as defined in [RCW 39.26.010\(23\)](#) or are exempt from competition. This policy is intended to reinforce that sole source exemptions should be rare, the product of extensive market research, and supported by sufficient forecasting. This policy also intends to eliminate procurement manipulation intended to avoid competition.

## POL-DES-140-00 Sole Source Contract Policy

**1. Sole source is an exception to competition requirements and must be approved by DES.**

Washington State promotes open competition and transparency for all contracts for goods and services. One exception to competition is a sole source contract ([RCW 39.36.125\(2\)](#)). Agencies must make an initial determination whether a proposed contract can be deemed a sole source utilizing the sole source contract approval procedure. Reference [PRO-DES-140-00 \(Sole Source Contract Approval Procedure\)](#).

**2. All sole source contracts must be approved by DES before the contract is executed.**

If an agency concludes, through documented market research, that a sole source contract is justified and necessary, the agency must submit the sole source contract to the Department of Enterprise Services (DES) for approval ([RCW 39.26.140\(1\)](#)) unless otherwise exempted by the Director ([RCW 39.26.140\(2\)](#)) (see Section 5 of this Policy for Sole Source exemptions). Agencies must obtain DES approval before a proposed sole source contract becomes binding, goods are received under the contract, or services are performed under the contract. No sole source contract will be binding unless it is approved by DES ([RCW 39.26.140\(2\)](#)).

**3. Sole source contracts must be made transparent.**

An agency must make sole source contracts available for public inspection for a period of not less than 15



working days before the proposed starting date of the contract. An agency must also provide evidence to DES that it posted the contract opportunity for a minimum of 10 working days on the State's enterprise vendor registration and bid notification system (known as [Washington's Electronic Business Solution \(WEBS\)](#)), selecting at a minimum all applicable commodity codes used by the prospective vendor. [RCW 39.26.140\(1\)](#). See PRO-DES-140-00 (Sole Source Contract Approval Procedure).

#### 4. Amendments to sole source contracts must be approved by DES.

All sole source contract amendments must also be filed with DES and receive approval prior to being effective, except when changes are minor or administrative in nature (as described in the Glossary Supplement). Contract amendments do not need to be posted on WEBS and do not require a 15 working day public inspection period. DES must approve any sole source amendment before any such amendment becomes binding and before any services may be performed or goods provided under the amendment. Amendments must be filed in SSCD under a previously approved sole source contract filing. See PRO-DES-140-00 (Sole Source Contract Approval Procedure).

#### 5. Exemptions:

A. Certain types of contracts are exempt from the requirements of this Sole Source Contracts policy:

- ~~1)~~ Exceptions to the competitive solicitation requirement, listed under [RCW 39.26.125\(3\)-\(16\)](#). Purchases from qualified Master Contracts and DES-approved cooperative contracts.
- ~~2)~~ Exceptions to the competitive solicitation requirement, listed under [RCW 39.26.125](#)
- ~~1)~~
- ~~3)~~2) Qualified contracts with Community Rehabilitation Programs under [RCW 39.26.230](#).
- ~~4)~~3) Original equipment manufacturer (OEM) maintenance service contracts and parts when procured directly from the OEM, or from the sole OEM designated reseller. This exemption does not apply if there is more than one OEM designated reseller.
- ~~5)~~4) Software maintenance and support services when procured from the proprietary owner of the software (Owner), or from the sole Owner-designated maintenance and support service provider. This exemption does not apply if there is more than one Owner-designated maintenance and support service provider.
- ~~6)~~5) Additional software licenses for solutions that were acquired through a competitive process, provided the additional licenses are equivalent in scope to the licenses that were included in the original purchase. Software license renewals are not exempt.
- ~~7)~~ Contracts where the vendor is specifically required by a grant or legislation.
- ~~6)~~
- ~~8)~~7) Contracts for medical, surgical, and dental decisions made by licensed medical professionals.
- ~~9)~~8) Contracts with Correctional Industries established under [RCW 39.26.251](#).
- ~~10)~~ Contracts related to collaborative research
- ~~9)~~ Contracts for services that are necessary for conducting collaborative research if the use of a specific contractor is mandated by the funding source as a condition of granting funds;
- ~~11)~~10) \_\_\_\_\_ Postal and postal service when not using consolidated mail.
- ~~12)~~11) \_\_\_\_\_ Utilities such as garbage, heat, sewer, ~~cable television~~, power, water, fire protection and recycle services.
- ~~13)~~12) \_\_\_\_\_ Professional development for state and/or higher education employees obtained from a third party, such as conferences, seminars, professional licenses, professional organization memberships, and professional publications. (See Glossary Supplement)
- ~~14)~~13) \_\_\_\_\_ Replacement or repair of rental equipment when required by the rental contractor



under the rental agreement.

~~15)~~14) \_\_\_\_\_ Contracts with instate nonprofit agency for the blind under [RCW 19.06.020](#).

~~16)~~15) \_\_\_\_\_ Contracts awarded by institutions of higher education from non-state funds only when the non-state funds account for 51% or greater of the total contract consideration.

~~17)~~16) \_\_\_\_\_ Mass media services (e.g. newspapers, journals, television, radio, billboards, or social media) only when no comparable competition exists for reaching the target audience with the intended media type.

~~18)~~17) \_\_\_\_\_ Used goods to include equipment, vehicles, and furniture only when the same or similar articles are not available from more than one source.

~~19)~~18) \_\_\_\_\_ Accreditation and Certification Testing services when the entity providing the service(s) is the only recognized authority.

~~20)~~19) \_\_\_\_\_ Goods and/or services when the providing entity has a copyright, trademark, or proprietary documents/data and there is no authorized reseller(s) or comparable good/service as documented through market research.

A.B. Each time an agency has a contract that fits within an exemption listed above, except for 5., A., 1), the agency must file in the SSCD within 10 business days of contract execution and indicate which exemption it has determined applies for the record.

B.C. Exempted contracts do not require posting in WEBS or for public inspection. No filing period applies to section 5. of this policy. Appropriate use of exemption(s) listed in this policy will be reviewed through contract audits and agency procurement risk assessments.

**6. Request(s) for Exemptions not listed above, must be sent to the DES Director in writing.**

If necessary to support a business need, agencies may request an exemption from competition and this policy for a specific contract or category of contracts. Such requests must be addressed to the DES Director and signed by the Agency Head. The request must include a detailed explanation of the proposed exemption, how it is necessary for the agency to fulfill its mission, how the request is in the best interest of the state, and how granting the request aligns with the intent of the law ([RCW 39.26.140\(3\)](#)).

**7. Information Technology contracts.**

All applicable information technology (IT) related sole source contracts must also conform to all applicable Washington Technology Solutions (WaTech) policies. ~~OCIO Policy #121.~~ Agencies should confer with WaTech the OCIO as outlined in policy. Similarly, DES will be available to answer the agencies' IT sole source contract questions.

**8. Compliance.**

Agency sole source compliance, including adherence to the requirements of this policy, will be a consideration in the agency's procurement risk assessment and may influence the agency's procurement delegation of authority.

**9. Delegated Authority.**

When filing in SSCD, agency will certify that it has (or will obtain) sufficient delegated authority, as defined in DES-POL-090, Delegation of Authority Policy.



### **10. Market Research.**

Due to frequently changing markets, agencies must conduct sufficient market research prior to filing for a new sole source contract or an amendment that extends the period of performance or proposes scope changes. Agencies must present compelling evidence of conducted market research for DES each contract term (including each/any term extension) and amendments.

### **11. Capability statements.**

An agency that receives a capability statement must submit all documents, correspondence, and the agency's analysis and conclusion to DES for review. Capability statements will be taken into consideration on whether an agency may continue with a sole source contract. Upon DES' review and response, the agency may reply to the submitting vendor with the conclusion.

### **12. Supplier Diversity.**

Where applicable, agencies must conform to the Supplier Diversity Policy and best practices. See DES-POL-090-06, Supplier Diversity Policy.

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## Procedure

**Procedure:** PRO-DES-140-00 [\[LINK\]](#)

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## Resources

- **Frequently Asked Questions (FAQ):** DES-FAQ-140-00 [\[LINK\]](#)
- **Template:** Sole Source Justification [\[LINK\]](#)
- **Template:** Sole Source Amendment Justification [\[LINK\]](#)
- **Template:** Legal Notice [\[LINK\]](#)
- **Glossary Supplement** [\[LINK\]](#)

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## History

Adopted July 1, 2013

### Amended

March 9, 2015

- Added exemptions 19 and 20.
- Added section numbering.
- Added revision date.
- Minor formatting changes.
- Moved FAQs to centralized webpage.

April 3, 2019

- Reformatted the policy so that it is accessible to all members of the public.
- Created annotated policy revision chart.
- Updated exemptions. See Sole Source Exemption Edits Chart.
- Revised the FAQ.
- Created sole source procedure.
- Supplemented general glossary of procurement terms.