

**This is an outdated version of the policy for historical purposes only -
Replaced with April 2019 version**



Policy # DES-140-00	SOLE SOURCE CONTRACTS (RCW 39.26.140)
Purpose:	<p>This policy provides the following information:</p> <ol style="list-style-type: none"> 1) Requirements for justifying a sole source contract. 2) Vendor notification requirements. 3) Initiating the Department of Enterprise Services (DES) sole source contracting approval process. 4) An overview of the DES sole source contracting approval process. 5) Satisfying sole source contracting transparency requirements. 6) Sole source contracting exemptions.
Enabling Legislation: RCW 39.26.140	<p>Effective January 1, 2013 and unless otherwise exempt, all agency sole source contracts must:</p> <ol style="list-style-type: none"> 1) Be submitted to DES, with supporting justification, not less than 10 working days prior to the contract start date. 2) Be approved by DES before the contract becomes binding, services are performed and goods are received. 3) Be made available for public inspection not less than 10 working days prior to the contract start date. <p>In addition, notice of all agency sole source contract opportunities must be posted on the state’s enterprise vendor registration and bid notification system (currently the Washington Electronic Business Solution (WEBS)) for at least five (5) working days.</p>
Sole Source Determination and Justification:	<p>It is the intent of the state to promote open competition and transparency for all contracts for goods and services. If an agency concludes that a sole source contract is justified and necessary, the agency must:</p> <ol style="list-style-type: none"> 1) Validate that the proposed contract meets the sole source definition in RCW 39.26.010 (22). 2) Verify a competitive process is not warranted. See Vendor Notice below. 3) Prepare the sole source contract and all related supporting documentation necessary to initiate the DES approval process.
Vendor Notice:	<p>In addition to submitting the required supporting documentation, vendors must be given notice and an opportunity to demonstrate that a sole source contract is not justified. Accordingly and unless otherwise exempt, state law requires that at a minimum, sole source contract opportunities must be</p>

Vendor Notice continued:	<p>posted on WEBS. Agencies must:</p> <ol style="list-style-type: none"> 1) Use/choose applicable WEBS commodity codes for the product or services being procured including those used by the prospective sole source vendor. 2) Post a notice of intent to award a sole source contract on WEBS for not less than 5 working days. The notice must include: <ol style="list-style-type: none"> a. A description of the purpose and scope of the contract. b. The criteria or rationale justifying the sole source contract. c. The name of the prospective contractor. d. The projected contract value. e. The period of performance, including options for extensions. f. Process for vendor inquiries or responses, including timelines and requirements.
Initiating DES Sole Source Contract Approval Process:	<p>To initiate the DES approval process, agencies are to utilize the DES Sole Source Contract Database (SSCD). The SSCD will prompt the agency to:</p> <ol style="list-style-type: none"> 1) Respond to the sole source justification questionnaire. 2) Submit evidence demonstrating the sole source contracting opportunity has been posted on WEBS. 3) Upload a copy of the sole source contract.
DES Approval Process	<p>Unless otherwise exempt, RCW 39.26.140(2) states that no sole source contract will be binding unless it is approved by DES. The statute also requires the submittal to DES be not less than 10 working days to enable DES to process sole source contract filings. Agencies are encouraged to budget ample lead time to accommodate the DES approval process, vendor notice requirements, and transparency requirements. In determining whether to approve a sole source contract filing, DES will review all information submitted including vendor challenges and the agency response.</p> <p>Any sole source contract set to begin any time prior to or during the DES processing period will be flagged as a “late filing” and will not receive approval even if all other sole source criteria has been satisfied.</p>
Transparency for the Public:	<p>RCW 39.26.140(1) requires that prior to the contract start date, agencies must make sole source contracts available for public inspection for a period of not less than 10 working days. As an interim solution, agencies must post on the agency website either the sole source contract(s) or notice and instructions on how to obtain a copy of sole source contracts. For audit purposes, agencies are encouraged to include in their contract file evidence (e.g. screen print out of webpage) that the 10 business day posting requirement has been met.</p> <p>DES will be working on developing a state sole source contracts web page where all agencies will be able to post sole source contract information. This will take the place of agencies posting the information on their</p>

	separate websites.
DES Sole Source Contract Amendment Approval	All sole source contract amendments must also be filed with and receive prior approval except when changes are minor or technical in nature. Contract amendments will not need to be posted on WEBS or require a 10 business day public inspection period.
Exemptions:	<p>The following types of contracts are exempt from this Sole Source Contracts policy:</p> <ol style="list-style-type: none"> 1) Qualified Master Contracts and Direct Buy procurements. 2) Qualified contracts with Community Rehabilitation Programs under RCW 39.26.230. 3) Original equipment manufacturer (OEM) maintenance service contracts and parts purchases when procured directly from the OEM. 4) Software maintenance and support services when procured from the proprietary owner of the software. The procurement of software maintenance and support from third party vendors is not exempt from this policy. 5) Contracts where the vendor is specifically required by a grant or legislation. 6) Expert witness contracts with the Attorney General’s Office, or agencies with administrative adjudicative authority. 7) Contracts for medical, surgical and dental decisions made by medical professionals. 8) Contracts related to educational curriculum. 9) Contracts with Correctional Industries established under RCW 39.26.251. 10) Contracts related to collaborative research. 11) Interagency and interlocal agreements. 12) Contracts for services related to banking supervision. 13) Postal and postal service when not using consolidated mail. 14) Utilities such as garbage, heat, sewer, cable television, power, water, fire protection and recycle services. 15) Contracts and procurements related to professional development such as conferences, seminars, professional licenses and memberships, professional organizations, and professional publications. 16) Replacement or repair of rental equipment when required by the rental agreement. 17) Contracts with instate nonprofit agencies for the blind under RCW 19.06.020. 18) Contracts awarded by institutions of higher education from non-state funds.
Request for Exemptions:	Agencies may request an exemption for a specific contract or a category of

Request for Exemptions continued:	contracts. Such requests are to be addressed to the DES director and be signed by the agency head. The request must include a detailed explanation of the proposed exemption and how granting the request aligns with the intent of the law.
Information Technology Contracts:	All applicable information technology (IT) related sole source contracts must also conform to OCIO Policy #121 and may require advanced approval. Agencies may need to coordinate with their assigned OCIO consultant . DES will also be available to assist.
Compliance:	Agency sole source contracting profile and compliance including the requirements of this policy will be a consideration in the agency’s risk rating and may influence the agency’s delegation of authority.
Definitions:	<p>“<u>Approval</u>” means that all sole source contracting requirements have been met and the contract may go into effect.</p> <p>“<u>Disapproval</u>” means that all sole source contracting requirements have not been met. Either changes or competition or both may be warranted.</p> <p>“<u>Qualified master contracts</u>” means:</p> <ol style="list-style-type: none"> 1) DES Master Contracts. 2) Cooperative contracts that conform to all applicable Washington State procurement laws, rules, policies and trade agreements. DES will maintain a list of cooperative contracts that meet state requirements. <p>“<u>Non-State Funds</u>” means funds provided by other than a state source, such as general fund appropriation or other fee generated funds. Contracts funded by non-state funds means contracts where over 50% of the funding comes from non-state sources.</p> <p>“<u>Sole source</u>” means a contractor providing goods or services of such a unique nature or sole availability at the location required that the contractor is clearly and justifiably the only practicable source to provide the goods or services.</p> <p>“<u>Software Maintenance and Support</u>” means services (maintenance) provided by a Licensor (proprietary owner) of software products to Licensee including, but not limited to, fixes, upgrades and the like to the software code. Technical services (support) may be included or sold as a separate offering by the Licensor and are covered under this exemption. This exemption <i>does not include</i> maintenance or support services provided by or through a third party.</p> <p>“<u>Collaborative research</u>” means research conducted by an agency or institution of higher education with another public or private entity.</p>
Frequently Asked	Q1 : If DES does not provide a decision within 10 business days of the filing, does the sole source contract automatically become approved?

<p>Questions:</p> <p>Frequently Asked Questions continued:</p>	<p>A: No. The goal of DES is to process all requests within 10 business days. There may be circumstances in which additional time will be required. DES will notify the agency of any delays or need for additional time.</p> <p>Q2: May the 5 business days advertising requirement, the 10 business days approval process and the 10 business days public inspection posting requirement run concurrently?</p> <p>A: Yes.</p> <p>Q3: Are agencies required to report client service contracts?</p> <p>A: No. Client service contracts are exempt from competition and should not be reported as sole source contracts.</p> <p>Q4: Rather than posting on the agency website, can't there be a central repository made available where all sole source contracts may be made available for public inspection?</p> <p>A: DES will be working toward this end but for now and to meet statutory requirements, sole source contract are to be made accessible directly from the agency.</p> <p>Q5: When would a grant require an agency to contract with a specific vendor?</p> <p>A: An agency may name a firm or individual in the written grant application to perform specific services or provide specific goods. If the approval from the funding source and receipt of funds requires the agency to contract with the named vendor, that contract is not required to be competitively awarded, filed with DES, or require approval by DES.</p>
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