

# Sole Source Contract Policy

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**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:** April 3, 2019

**Last update:** N/A

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

**Approved by:** \_\_\_\_\_ Chris Liu, Director

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## 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.

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

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

It is the intent of the state to promote 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)). If an agency concludes 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). Reference PRO-DES-140-00A (Sole Source Contract Approval Procedure).

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

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\(2\)](#)). A contract for work performed before DES approves it as a sole source is null and void.

**3. Transparency.**

An agency must make sole source contracts available for public inspection for a period of not less than 10 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 5 working days on the State's enterprise

vendor registration and bid notification system (known as Washington's Electronic Business Solution (WEBS)). RCW 39.26.140(1). See PRO-DES-140-00A (Sole Source Contract Approval Procedure).

**4. Sole source contract amendment approval.**

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). Contract amendments do not need to be posted on WEBS and do not require a 10 working day public inspection period. See PRO-DES-140-00A (Sole Source Contract Approval Procedure).

**5. Exemptions:**

Certain types of contracts are exempt from the requirements of competition and this Sole Source Contracts policy:

- 1) Purchases from qualified Master Contracts and DES-approved cooperative contracts.
- 2) Exceptions to the competitive solicitation requirement, listed under RCW 39.26.125
- 3) Qualified contracts with Community Rehabilitation Programs under RCW 39.26.230.
- 4) 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) 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) 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.
- 8) Contracts for medical, surgical and dental decisions made by medical professionals.
- 9) Contracts with Correctional Industries established under RCW 39.26.251.
- 10) Contracts related to collaborative research
- 11) Postal and postal service when not using consolidated mail.
- 12) Utilities such as garbage, heat, sewer, cable television, power, water, fire protection and recycle services.
- 13) Professional development obtained from a third party, such as conferences, seminars, professional licenses, professional organization memberships, and professional publications.
- 14) Replacement or repair of rental equipment when required by the rental agreement.
- 15) Contracts with instate nonprofit agency for the blind under RCW 19.06.020.
- 16) Contracts awarded by institutions of higher education from non-state funds.
- 17) 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) Used goods to include equipment, vehicles and furniture only when the same or similar articles are not available from more than one source.
- 19) Educational and Certification Testing services when the entity providing the services is the only recognized authority.
- 20) Accreditation services when the entity providing the accreditation is the only recognized authority.

**6. Request for Exemptions not listed above.**

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, and how granting the request aligns with the intent of the law.

#### **7. Information Technology Contracts.**

All applicable information technology (IT) related sole source contracts must also conform to [OCIO Policy #121](#). Agencies should confer with the OCIO as outlined in the 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.

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## Procedures

**Procedure:** PRO-DES-140-00A

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## Appendices

There are no appendices associated with this policy

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## Forms/Instructions

There are no forms associated with this policy

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## Frequently Asked Questions

**FAQ:** Sole Source Frequently Asked Questions

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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.
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