



\$150,000 contracts (Policy §C-4) Lunch and Learn Q&A – June 6th, 2023

Q&A for June 6, 2023 Lunch 'n Learn meeting

1. Question: Is this mandatory or just a suggestion for the under \$150,000 contracts?

DES Response: It is mandatory. Per [DES Policy DES-090-06, Supplier Diversity](#) section C(4), agencies are required to award competitively procured contracts with an initial value less than \$150,000 to the highest-ranked responsive and responsible small or veteran-owned business, unless there was no responsive and responsible bid from a small or veteran-owned business.

2. Question: Can you define "sheltered bidders" please?

DES Response: The term "sheltered bidder" is not used in either the policy or the Handbook. However, "sheltered market" means a procurement procedure in which certain State contracts are selected for businesses owned and controlled by small- and veteran-owned businesses on a competitive bid or negotiated basis. Thus, those small- and veteran-owned businesses within the sheltered market are referred to as "sheltered bidders".

3. Question: What constitutes a "contract"?

DES Response: A valid Contract is formed when there is:

- Offer
- Acceptance
- Consideration
- Two or more parties who have the capacity to contract

4. Question: So, with the best value exception in the event that there is a small/veteran owned business bid, they aren't



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removable from a responsiveness/responsibility perspective, and they score significantly less or have a clearly inferior product to a non-small business we can just say the large business offers "best value," award to them, and this will meet the policy requirement?

DES Response: If the small/veteran bidder is responsive and responsible, but their price is higher, the award would still be made to the small/veteran business. Per [DES Policy DES-090-06, Supplier Diversity](#) section C(4), agencies are required to award competitively procured contracts with an initial value less than \$150,000 to the highest-ranked responsive and responsible small or veteran-owned business, unless there was no responsive and responsible bid from a small or veteran-owned business.

Provided that the small/veteran bidder's product or service meets the minimum product specifications (even if the product is "inferior" to other bidder's products) and is otherwise considered responsive, the award would still be made to the small/veteran business.

DES is always available to consult with agencies as they draft their procurement documents.

5. Question: If no potential sheltered bidders are found when doing market research would you be exempt from having to award to a sheltered bidder?

DES Response: No, this would not be grounds for an exemption (that isn't how this requirement works) – the language informing bidders of the intention to award to a small/veteran business would still be included in the solicitation:

Solicitation Introduction and Priority Statement: The Washington State [Agency] is issuing this Competitive Solicitation pursuant to RCW 39.26. Pursuant to this Competitive Solicitation, [Agency] intends to conduct a competitive procurement to award an Agency Contract for [Agency] to purchase ___ estimated to be



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valued at less than \$150,000. Because it is estimated to be less than \$150,000, the agency intends to award the contract to the lowest responsive and responsible bid from a small business (as defined in RCW 39.26.010(22)(a)) or veteran-owned business, unless none of these businesses are responsible and responsive to this solicitation.

If there are no small/veteran bids received, nothing would prevent you from making the award to a responsible and responsive bidder.

6. Question: Is this a policy we can apply on a discretionary basis; i.e., when it makes sense to do so - because there are no sheltered bidders on our roster under that category?]

DES Response: The question applies a label - “discretionary” that is confusing or even misleading. To be clear, agencies must conduct a series of steps when implementing Policy C.4 (this is mandatory):

- a. Identify and confirm agency procurements valued under \$150,000 (C.4.1 and .2)
- b. Include relevant language in the solicitations and contracts identified in C.4.1 and .2 (C.4.3)
- c. Evaluate bids (C.4.4)
- d. Determine the ASB (C.4.5)
- e. Make an award (C.4.6)
- f. Include documentation in the agency’s contract file(s) (C.4.7 and .9)

Note that if at some point during the solicitation process, it becomes clear that this policy is no longer applicable (i.e., the contract value becomes higher than \$150,000, or there are no small or veteran bidding companies), then there is no reason to continue to follow the additional steps of the policy. But the fact that there may not be bidders under a solicitation is irrelevant when the issue of whether to apply on a discretionary basis. The policy and Handbook are mandatory.



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7. Question: So, if we get bids from non-small businesses and small businesses, but the small business is nonresponsive and non-responsible, does this mean the contract can be awarded to the highest scored non-small business?

DES Response: Yes. Per DES Policy DES-090-06, Supplier Diversity section C(4), agencies are required to award competitively procured contracts with an initial value less than \$150,000 to the highest-ranked responsive and responsible small or veteran-owned business, unless there was no responsive and responsible bid from a small or veteran-owned business.

8. Question: What happens if a sheltered bidder doesn't score the highest in a procurement evaluation process? Do we still have to award the highest scoring sheltered bidder rather than the bidder who actually scored the highest?

DES Response: If the small/veteran bidder is responsive and responsible, but their price is higher, the award would still be made to the small/veteran business.

Note that an agency can avoid predatory bids in this circumstance by including language in the solicitation that notifies bidders that a bid may be deemed nonresponsive if it exceeds the average of all other bids by an amount deemed appropriate by the agency (i.e., 10% or 20%). See Handbook section C.4 FAQ Scenario 3.

9. Question: Can we get a link to the handbook?

DES Response: Handbook: [Supplier Diversity Virtual Handbook - Overview \(wa.gov\)](#)



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10. Question: What would be your recommended maximum percentage for sheltered bidder to be selected over non-sheltered bidder?

DES Response: That isn't how this requirement works; the language informing bidders of the intention to award to a small/veteran business would still be included in the solicitation:

Solicitation Introduction and Priority Statement: The Washington State [Agency] is issuing this Competitive Solicitation pursuant to RCW 39.26. Pursuant to this Competitive Solicitation, [Agency] intends to conduct a competitive procurement to award an Agency Contract for [Agency] to purchase ___ estimated to be valued at less than \$150,000. Because it is estimated to be less than \$150,000, the agency intends to award the contract to the lowest responsive and responsible bid from a small business (as defined in RCW 39.26.010(22)(a)) or veteran-owned business, unless none of these businesses are responsible and responsive to this solicitation.

Handbook section C.4.3(a). If there are no small/veteran bids received, you make the award to another responsive and responsible bidder.

Note that an agency can avoid predatory bids in this circumstance by including language in the solicitation that notifies bidders that a bid may be deemed nonresponsive if it exceeds the average of all other bids by an amount deemed appropriate by the agency (i.e., 10% or 20%). See Handbook section C.4 FAQ Scenario 3.

11. Question: Will the template be available in the Resources available to agencies?

DES Response: Yes, sample language can be found in the Supplier Diversity Handbook: [Supplier Diversity Virtual Handbook - Overview \(wa.gov\)](https://www.wa.gov/supplier-diversity/virtual-handbook/overview) section C(4).



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12. Question: Other than the suggestions in the Supplier Diversity handbook, does DES have any requirements, suggestions, hopes around procurements that are primarily responded to from "non-owned" bidders. Such as Nonprofits, Chambers of Commerce, community organizations?

DES Response: Not at this time. The purpose of this policy is to ensure that all procurement professionals and those with acquisition responsibilities use approved, legally compliant strategies that encourage and facilitate the purchase of goods and services from small, diverse, and veteran-owned businesses to the maximum extent possible.

13. Question: What if we run a solicitation that is estimated to be \$350K but we award to multiple vendors and the resulting contracts are all under the \$150K? would this still apply?

DES Response: No. The preceding condition is that the solicitation under consideration is estimated to be \$150,000 or less in value. If the agency conducted a good faith solicitation with the result described in the condition, C.4 does not apply.

14. Question: Is this mandatory for both goods and services AND public works projects/construction?

DES Response: The [DES Policy DES-090-06, Supplier Diversity](#) only applies to goods and services under RCW 39.26. It does not apply to public works projects.



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15. Question: So, everything under \$150K has to be bid out?

DES Response: Well, not everything. While it is true that the solicitation language must be included for all competitive solicitations valued at \$150,000 or less, it does not apply to contracts excepted from competitive solicitation. See [RCW 39.26.125](#).

16. Question: An agreement - so a MOU/MOA could be a contract?

DES Response: Yes. A valid Contract is formed when there is:

- Offer
- Acceptance
- Consideration
- Two or more parties who have the capacity to contract

MOU/MOAs each contain these elements.

17. Question: To confirm what I think Drew said: Vetting the marketplace using these strategies to award to sheltered vendors is required, but blanket awarding ALL contracts that are less than \$150K to those sheltered vendors is NOT required, correct?

DES Response: No, Per [DES Policy DES-090-06, Supplier Diversity](#) section C(4), agencies are required to award competitively procured contracts with an initial value less than \$150,000 to the highest-ranked responsive and responsible small or veteran-owned business, unless there was no responsive and responsible bid from a small or veteran-owned business.

The language informing bidders of the *intention* to award to a small/veteran business would be included in the solicitation, **regardless of the results of the agency's market research:**



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If there are no small/veteran bids received, nothing would prevent you from making the award to another non-small/veteran business.

18. Question: Many of our contracts under \$150K fall under one of our program/agency Master Contracts. Of course, the master contract goes out for solicitation, these small contracts are not open to all bidders. Do you have suggested protocols or contract wording to help meet supplier diversity in those contracts?

DES Response: [DES Policy DES-090-06, Supplier Diversity](#) does not apply to purchases from DES Statewide Contracts (formerly “Master Contracts”) or DES approved cooperative contracts, as defined in [RCW 39.26.010\(15\)](#).

If this is a “Master Contract” created by an agency that is not DES, these contracts are not exempt, and the Supplier Diversity policy requirements would apply.

However, if the agency is conducting a secondary competition within a statewide contract (i.e., a “two-tier contract”), portions of the policy still apply to the solicitation, including forecasting, outreach, and where applicable, small/vet points. Using these strategies meets the intent to increase business between the state and small, diverse, and/or veteran businesses.



19. Question: So, any PO is a contract?

DES Response: Yes, a purchase order is a contract.

20. Question: The availability of sheltered will show up in the agencies' recording of solicitation results in WEBS (list of bidders and their status). Is there a way to run reports by commodity code(s) for outreach?

DES Response: It is possible to search for vendors by commodity code in WEBS. For assistance, please reach out to our WEB Customer Support team, webcustomerservice@des.wa.gov, (360) 902-7400.

21. Question: For clarification - A colleague is interpreting this as all or nothing (we may apply this policy or not and once we choose an option, we can go only that route) ...*"If the state agency or authorized local government elects not to use the methods outlined in this subsection..."*

DES Response: It is unclear what "opting in" to the policy means for state agencies other than higher education. The policy requirements are mandatory where applicable.

The purpose of this policy is to ensure that all procurement professionals and those with acquisition responsibilities use approved, legally compliant strategies that encourage and facilitate the purchase of goods and services from small, diverse, and veteran-owned businesses to the maximum extent possible. Section C.4 of the policy is one of many strategies designed to achieve this intent.



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Although local governments are eligible to purchase from statewide contracts, they are not under the authority of RCW 39.26. See RCW 39.26.010(1). Institutions of higher education may exercise independently the same procurement powers as the DES Director. However, policies and procedures created by the higher education institutions must comply with RCW 39.26. RCW 28B.10.029(1)(c)(i).

22. Question: Do the words "initial value less than \$150,000" mean that unbundled contracts should be excluded?

DES Response: No.

23. Question: Will there be additional sessions on this topic?

DES Response: There are no additional sessions planned for this topic at this time. However, we always welcome questions, which may be sent to us at DESmiEnterpriseProcurementPolicy@des.wa.gov.

24. Question: I have a solicitation that will be awarded to a number of vendor's based on their medical specialty field. Our plan is to award each vendor a contract, which most will be under \$150K, but a few would exceed \$150K. My understanding is we would need to apply this policy for those contracts under \$150K.

DES Response: Yes, Per [DES Policy DES-090-06, Supplier Diversity](#) section C(4), agencies are required to award competitively procured contracts with an initial value less than \$150,000 to the highest-ranked responsive and responsible small or veteran-owned business, unless there was no responsive and responsible bid from a small or veteran-owned business.