



Q&A for June 13, 2023 Lunch ‘n Learn meeting

1. Question: Here is the situation – I work for a small agency and sometimes, project managers are crunched for time to complete a complex project. The project can be broken down into separate pockets of work. Staff know they have different services they want and know who they want to work with. One service may be provided through an IAA (with the UW, WWU, WDFW, etc.) and another service from a small business through a direct buy. Sometimes it is just two IAA's. Does this meet the unbundling policy?

DES Response: The definition of unbundling is given in the Handbook Glossary as “a procurement practice that separates a contract into segments like geographic area, category, type of good and/or services, and/or scope” (emphasis added).

However, your question appears to describe a complex **project** which includes various purchases (not necessarily one main contract that is divided). If that’s the case, the Supplier Diversity Policy wouldn’t apply to the project, but it would apply to each competitive contract within the project (and those would need to have an unbundling analysis). The policy applies to competitive contracts, not overall projects.

2. Question: in the previous question, how do we track all of this for purposes of the unbundling policy?

DES Response: Agencies should use the unbundling worksheet to provide an explanation regarding the choice to unbundle or not unbundle. The worksheet should be kept in the contract file.

Since the policy only applies to competitively procured contracts, you would need to comply by documenting the unbundling analysis only for the competitively procured contracts of the complex project (we recommend using the unbundling worksheet to conduct the unbundling analysis).

We strongly recommend documenting the direct buy purchases from small or veteran-owned businesses as well, but that is not a requirement of the Supplier Diversity Policy.



3. How do we as an agency assure that all of our subcontractors are counted towards our spend?

DES Response: [From Doug Mora, OMWBE] OMWBE is implementing Access Equity's Contract Compliance module to track subcontractor spend. This will improve the accuracy of reporting and the efficiency with which we collect the information. Your agency's Access Equity change manager will contact you with more information on how to enter data into the system and OMWBE will provide self-guided training through The Learning Center (available in September 2023). You can send questions to AccessEquity@omwbe.wa.gov.

4. Does a solicitation that involves multiple awards per region or area meet the criteria for unbundling?

DES Response: Perhaps. Unbundling is defined as “a procurement practice that separates a contract into segments like geographic area, category, type of good and/or services, and/or scope,” which is what is described here. See Supplier Diversity Policy Handbook Glossary. However, the way the question is phrased seems to suggest that every multiple-award contract is the product of unbundling. This is incorrect.

Unbundling analysis does not begin with the fact of multiple awards. In order to show compliance with the policy, an agency must conduct an unbundling analysis for every competitive solicitation. In some cases, the unbundling analysis can result in multiple awards per region or category. In every case, where appropriate as indicated by its unbundling analysis, the agency should unbundle contracts to promote opportunities for small, diverse, and veteran-owned businesses.

5. If a company declares that they have a sub-contractor, can you buy direct from that sub-contractor? Not direct buy but go directly to them using the contract.

DES Response: No. If the subcontractor is a subcontractor to a contractor that was awarded a contract through a competitive process, the purchase must be made from the contractor (unless the contract offers an alternative purchase option to purchase directly from a subcontractor). If the subcontractor is a subcontractor to a company that does not have a contract that has been awarded through a competitive process, then the agency must comply with procurement laws and policies.



6. We support and encourage unbundling as much as we can. However, in some cases, a risk associated with unbundling when procuring for a large IT system (e.g., unbundle one large procurement involving hardware, software, and development services into their separate components) is that if the final system encounters a technical issue/problem, we have difficulty determining which vendor (hardware, software, or service providers/vendors) is responsible for the problem. Could you please advise how we can mitigate this risk?

DES Response: As long as you document your reasoning in the unbundling analysis, you are okay to award product and service contracts together so long as you can justify it (mitigating risk is a valid justification). The Virtual Handbook says that Procurement Staff will consider various factors in its unbundling analysis, including: “Products and Services: Are the products and services related to each other? Is there a necessity to tie the award of the service to the award of the product? . . . If not, award the product and service separately.” See Virtual Handbook, Section C3.2.e.

7. When unbundling to increase supplier diversity, do we (the Agency) need to show/document the reason why we unbundled?

DES Response: Agencies should use the unbundling worksheet to provide an explanation regarding the choice to unbundle or not unbundle. The worksheet should be kept in the contract file.

8. If I have a small order of \$50K and I separate part out to a diverse vendor and now both orders fall under the direct by limit. This may look like it is being separated to avoid competition. Is this OK to do?



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DES Response: It is acceptable if the purpose of unbundling is to comply with the supplier diversity policy. Agencies should use the unbundling worksheet to provide an explanation regarding the choice to unbundle or not unbundle and the reasons for the choice. The worksheet should be kept in the contract file.

9. If there is a possibility of unbundling in a contract but the agency doesn't do so. What would be the consequences?

DES Response: Agencies should use the unbundling worksheet to provide an explanation regarding the choice to unbundle or not unbundle. The worksheet should be kept in the contract file. Documenting will demonstrate how the analysis was conducted, and if later it is determined that there was a possibility to unbundle that was missed without malicious intent, we can look to the documentation and see if we can improve the tools and trainings for the unbundling analysis.

10. If we are following the intent of the Direct Buy policy and the dollar threshold, of \$30K or \$40K - when we look at the unbundling to create a greater reach to increase purchases from small, diverse women and veteran business, are we able to utilize the \$30K or \$40K for each of the contractors as a result of the unbundling? Perhaps that may be 3 contracts being procured for the same services for the same dollar amount. Is that an accurate way to interpret an unbundling approach?

DES Response: If we are understanding the question correctly, what's being asked is: if a contract would initially be \$120K, would it be okay to unbundle it and if the anticipated value of each unbundled contract is under \$40K purchase those unbundled contracts using the direct buy process from three different small, diverse, women and veteran businesses.

This would be an acceptable practice only if the contract is being unbundled by region or by category, and each vendor will potentially cover a different needed region or category (agencies want to avoid looking like they are trying to circumvent the competitive solicitation process).



Note that if the agency unbundles, but all work, categories, and/or regions are bid under the same solicitation, the overall solicitation value would dictate the procurement method (i.e., direct buy, \$150,000 or less, etc.).

11. I'm confused. For the one example/question earlier, the answer was OKAY to break out the \$50k agreement to 2 Vendors, however for the other question - Drew was not able to answer this last question. So, it's confusing.

DES Response: The answer depends on how the solicitation is done – are the unbundled sections done separately? If so, then the agency could potentially use direct buy if the cost of each purchase is under \$30k or \$40k. If not done separately, the overall solicitation value would dictate the procurement method (i.e., direct buy, \$150k or less, etc.).

12. DOH buys many lab supplies under a NASPO contract with Fisher Scientific & VWR (corporations) that say they cultivate diverse suppliers. Does the agency get credit for buying the goods sold by Fisher or VWR that were sourced from smaller companies? Shouldn't we prefer the NASPO contract if it allows us lower prices than if we ordered from the manufacturer? We are told always to prefer the statewide contract, so undoing that thinking & habit will take some work.

DES Response: It depends. As with all unbundling questions, the inquiry is how much of a purchase was actually from a small/veteran business. Whether an agency “gets credit for buying the goods sold by Fisher or VWR that were sourced from smaller companies” relies on whether the NASPO company provides documentation showing how much of the purchased item(s) was sourced from verified small or veteran-owned businesses. Any credit given will only be for the portion of the purchase provided by the small/veteran business.

To the extent that this question involves subcontractor spending, OMWBE is implementing Access Equity’s Contract Compliance module to track subcontractor



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spend. This will improve the accuracy of reporting and the efficiency with which we collect the information. Your agency's Access Equity change manager will contact you with more information on how to enter data into the system and OMWBE will provide self-guided training through The Learning Center (available in September 2023). You can send questions to AccessEquity@omwbe.wa.gov.

With regard to the second question about preferring “the NASPO contract”, the answer is also “it depends.” Agencies are reminded that they “must use existing Statewide contracts, or DES approved cooperative contracts (i.e., NASPO), unless the contract cannot justifiably satisfy the agency’s needs.” See POL-DES-090-00(6)(a) Delegated Authority Policy. Recall that to determine that a Statewide contract or a NASPO contract “cannot justifiably satisfy agency needs,” an agency is directed to use its discretion and good, sound judgment. Examples include: the product 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 spending with certified small and minority-, women- and veteran-owned businesses. If a diverse spend option is not available on a statewide or NASPO contract and an agency has identified a diverse spend option that meets its needs and complies with all procurement rules, then the agency would be justified to purchase outside of a statewide or NASPO contract. The reasons justifying the off-contract purchase should be documented. Unless the purchase is a direct buy, it must be competed.