

## Transcript for October 17, 2023 Lunch 'n Learn meeting

**[This transcript was edited for accuracy and clarity.]**

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Zavatsky, Drew (DES)

Good afternoon, everybody. My name is Drew Zavatsky. I'm with the Department of Enterprise Services (DES) . Welcome to the seventh in a series of Lunch 'n Learn sessions. The first four were in June. The last four, including today, are this month. Today's session is on Using Reserved Awards in Competitive Solicitations for Goods and Services.

Joining me today are two fantastic professionals that I will allow to introduce themselves.

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Bacon, Jaime (DES)

**Slide 2** Hello, I'm Jamie Bacon. I'm one of the Contract Specialists here at DES.

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Scotti, Victoria (DES)

Hi, I am Victoria Scotti, also a Contract Specialist for DES. I'm looking forward to speaking with everyone today.

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Zavatsky, Drew (DES)

**Slide 3** Thank you both. So, as a quick overview for those of you who have not attended one of our previous Lunch 'n Learn sessions, DES is the state's lead procurement agency. All procurements flow through us either directly or we delegate authority to agencies to procure goods and services. DES procures and manages about 200 statewide contracts that are usable for all agencies and by all agencies, and quite a few other entities in the state as well, including municipalities, counties, and various other authorities. Those 200 contracts have about 1500 vendors associated with them. DES is also responsible .for developing and implementing procurement policies and procedures for use by all Washington agencies.

**Slide 4** What enables us to do all of these activities are various statutes, and Executive Orders from our Governor. There are located in RCW 39.26, as identified here in this slide. Pertinent to our discussion about supplier diversity is RCW 39.26.090 which tells DES to "encourage and facilitate buying goods and services from Washington's small businesses, micro businesses, many businesses, minority and women owned businesses." And there's another statute which has the same role that we have for promoting and furthering commerce with veteran owned businesses. See RCW 43.60A.200. All these considerations are included as well in various executive orders, the most recent of which is the Equity in Public Contracting order EO 22-01.

**Slide 5** This area has become more focused since the 2019 disparity study, which basically said that we as a state were not meeting legal and ethical – and I would argue, moral – requirements to share the state's spending fairly across all sectors within Washington. The disparity study showed that this wasn't

guesswork; not somebody's idea of what might be happening. Instead, the study actually proved that the numbers about how we spend the state's money shows that there is a real disparity.

There were about 15 to 20 recommendations of that study for remedial action to improve how the state does business. One recommendation, on page 20 of the study, was for us to create a race- and gender-neutral small business enterprise target market in Washington. At DES, we decided that creating a reserved market tool for agencies meets this recommendation. Today we discuss how to use the tool.

**Slide 7** OK, the Supplier Diversity Policy is online, as is the Supplier Diversity Virtual Handbook, which in effect are the procedures that support implementing that policy. They are shown here in the PowerPoint and by the way, the PowerPoint is going to be available for review in a few months from today.

At each of our Lunch 'n Learn sessions we collect questions and whatever answers provide during the session and put that information into a PDF. We answer any remaining questions, and then make the resulting document available on our website. There will be three documents that you'll be able to see later on. One is this presentation. The second is a transcript, and the third is the actual Q&As that are edited, including any answers that need to be more complete.

**Slide 8** The way that we responded to the disparity study is to create a bunch of strategies based on the actual recommendations identified in the study. They are shown in the slide as Strategy Tools C-1 to C-8. Now, the one strategic tool that we're talking about today is in section C-7 of the Policy and the Handbook. C-7 includes three separate strategies: a) Evaluation Points; b) Subcontractor Inclusion Plans; and c) today's topic, Reserved Awards.

**Slide 9** This slide shows the actual Reserved Awards page in the Handbook. We just wanted you to see what it looks like when you're actually in the Virtual Handbook.

So, before I hand it over to Victoria, please make a note of any questions you may have, put them in chat, and then we will address them after the presentation as time allows. Here's Victoria.

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Scotti, Victoria (DES)

**Slide 10** Thank you, Drew. So, when should I use a reserved award? What I normally think about is there a need and do we have the opportunity to hire a small, diverse, or veteran-owned business? To decide that I research the market, to see if there are small, diverse, and veteran-owned businesses in that market? Normally I'll use WEBS to search commodity codes to see what businesses are out there. I also make sure to research federal funds because sometimes small or veteran reserved rewards may not be allowed when using federal funds. That's something to really keep note of when researching a contract.

Another thing to think about when I decide whether or not it to use a reserved award, I ask myself, is there anything within my contract's structure that may be a barrier to small or veteran-owned businesses? Also, keep in mind, what are the most important needs of the customers? If, for example, you only need one contractor for a contract, a reserved award isn't the right way to go. And again, that is all determined when you're conducting your research. Next slide, please.

**Slide 11** Thank you. An example of this strategy is recently, I've been working on the statewide spoken language interpreter contract, which is currently under evaluation. Through my research through conversations with customers, it was determined there were many small businesses within this industry

in Washington. So, it made sense to have a reserved award. I learned that there are multiple languages needed. And from there I created a top 20 list of required languages that will be bid on. As the process evolved, we ended up with 45 languages total which are available for bid.

Then, through conversations with potential bidders, I learned that requiring both in-person interpreting and phone/video interpreting for the top 20 languages acted as a barrier for small businesses. They normally either provided only over-the-phone and video interpreting services and not in-person services, or it was a one person show and they only provided 5 languages and they couldn't provide all top 20. That meant that they weren't going to be able to bid on this contract if that structure was kept.

**Slide 12** And so I decided to change the structure of this contract, and to break it down by the need of the customers and the ability of the interpreters. We knew the customers needed the top 20 languages. That was an absolute need and we knew they needed in-person interpreting, we knew they needed over-the-phone, and we knew they needed a video remote, but what we could do is break down that structure to make it available for smaller businesses.

And so, we decided to separate the in-person interpreting from over-the-phone and from video. From there we allowed all businesses to bid on the top 20 languages, and to provide interpretation in-person as well as over-the-phone and video. But then we created a separate category for the reserved award where they were not required to bid all top 20 languages. They could bid any language and this category would be awarded by the language, so it's a slightly different structure in evaluating bids, but essentially the same pass-fail requirements. It still had the same cost requirements, but bids were evaluated by language rather than by averaging the scores for all top 20 languages. The next slide is an example of our bid scoring sheet.

**Slide 13** The highlighted languages are the top 20 language category, they were not required to be bid on by the Smalls.

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Zavatsky, Drew (DES)

Thank you so much. And I think we're going to go to Jamie now.

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Bacon, Jaime (DES)

**Slide 14** My presentation is more like a "lessons learned" review. So, we have reserved awards. Why? How?

My presentation starts by piggybacking off of what Victoria was talking about – doing your research and clarifying what you know the business needs are for that contract. And then deciding if a small business reserved award makes sense. Definitely sending messaging out to users helps, advertising the contract opportunity on our customer portal pages, and publish an FAQ worksheet that can inform potential bidders about the upcoming solicitation. It's also important to consider the federal funding issue. With all of these considerations, the intent is always to promote equity.

**Slide 15** So, my focus is on the lessons learned. I have two examples. One solicitation I did was for impact attenuators. They had different categories that could be separated into different solicitations. I wanted to have at least some main awards, and then some reserved awards. The categories were structured in a way to where at least maybe a small could have gotten a winning bid in one of the categories, if not all of

them. But for this solicitation, I did not get any reserved awards. It was a little bit more restrictive as far as the requirements for these items were concerned. The attenuators had a safety standard requirement, which manufacturers had to meet in order to participate. Or, in the alternative, you had to be an authorized distributor to sell to the state.

So, one lesson that we learned is maybe to do a little bit more outreach in the beginning. It could have resulted in getting some more bidders. I did try to market it out to some small vendors, but there were no bids. There were a few smalls that could have participated, but not a whole lot. Another thing we could have tried was to send out a Request for Information (RFI) to trying to determine who could participate in the bidding. These are ideas that, for me personally, were lessons learned – things that I can do to maybe get a small vendor next time.

**Slide 16** The second example, which is the next slide, shows more of what happens when you have a commodity where we have a small veteran owned business that actually is seeing 52% of the sales. They are actually leading the contract in sales. As it happens, the vendor also received a reserved contract. They got 52% of the business because there were a couple of additional vendors that initially were going to be on this contract, but for various reasons, vacated the contract. When this happened, it left a gap in the contract which actually opened up the doors for this small veteran owned business to actually have the lead in sales. It definitely helped us that the veteran vendor was able to provide services for all the counties in Washington. It's kind of a happy ending for the reserved awards, like showing what can happen when we have them and they're definitely servicing the contract effectively, based on the sales.

So, these are some lessons learned here, opening it up for the main awards and for reserved awards.

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Zavatsky, Drew (DES)

**Slide 17** Thank you so much. And just a quick note about the resources that are available, the Virtual Handbook has a listing of the best practices and FAQs for this strategy. It is sort of the “go to” resource; in addition, you can always call DES and/or OMWBE because we are very much partners in this whole effort. And with that, we will move into the questions. Zoë, you're on.

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Mroz, Zoë (DES)

**Question #1** We had a great question that came up which is, “what is a reserved award?” It's a fair question here for our presentation.

**Answer #1** I did put in the chat our definition from the glossary as well as the definition of a multiple award:

“Reserved award” means one or more contracts that are designated for Washington small/veteran-owned business(es) under a multiple-award competitive solicitation.

“Multiple award” refers to an award strategy that allows more than one business to provide the same or similar goods and/or services to meet business needs such as geographical supply, increasing availability, and increasing the number of businesses that can participate in the contract.

But if we have any follow up questions for Victoria or Jamie, or if either of them wants to elaborate on how you decide to do a reserved award, I think that might be helpful to talk about it a little bit more.

**Question #2** When do you know that “no, this strategy is not going to work for me for this solicitation?”

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Scotti, Victoria (DES)

**Answer #2** I can elaborate on this a little bit more. So, for instance on the spoken language contract that I just recently worked on, I looked at the previous contracts that have been created and also similar contracts written by other agencies. And I researched the previous spend to determine how many contractors should be awarded for this contract and say for example, where should they be located around the state. Previously, there were five contractors for the entire state, and that worked out perfectly.

From there, I decided whether or not the needs of this contract could be met with standard contractors, and one reserved award. The issue was whether this arrangement would be providing the same amount of service, the same cost of service, sufficient quantity of services, etc. So, that's kind of how I decide.

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Bacon, Jaime (DES)

So that's similar to what I do and, like what Victoria was saying during the research stage, you kind of look to see if there is a small or veteran-owned or some other type of small business that can supply that commodity or service. I've had situations where we realize that we can use the strategy during the research process, as well as looking at who's registered as a small or veteran-owned business. If there aren't any smalls around based on your research, then that tells you not to use this strategy.

But the analysis always begins with clarifying your business need. Then branch out and find out if there are smalls available in that area. Another consideration is whether the smalls could actually meet the demand, you have to kind of make that assessment too.

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Zavatsky, Drew (DES)

**Question #3** So, I have sort of a follow up question about that. It's about regional distribution. Is the decision to create reserved awards based on regional considerations?

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Bacon, Jaime (DES)

**Answer #3** Yes, in our earlier example in slide 16, the reserved awards were county related. There was a part of that solicitation that was reserved for the different counties to bid on. For various reasons it wasn't met by the bidder community, the vendors. And so there was a vacancy left in part of the state. That was why the reserved award vendor actually became the sales leader in servicing those counties.

But as to knowing who your potential vendors are, there's always discussions during sourcing team meetings too that can bring forth what the agency's needs are. It's possible to learn from the team that “this is a great vendor, we want to do outreach to them, to bring them on, and they're only in this area.” In that case, you do think regionally, maybe they can't do the whole state, but regionally they could. So, those are considerations to make, where the successful bidder was based in a county even though I don't think it initially was developed that way.

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Mroz, Zoë (DES)

**Question #4** Can you review the reserved award process for solicitation for a one-time service or one-time delivery of product?

**Answer #4** This is a good question because it points out that some folks do not know what a reserved award is, and that maybe this is a strategy that you haven't used before in your agency. And maybe there's no need to ever use this strategy in your agency. This is very much one of those strategies in the Virtual Handbook that is used when applicable only. You're not going to be using this every single time.

The audience member clarifies her question: as an example, this year [DSHS] did a solicitation for a Small Business Administration [electric vehicle] charging station for McNeil Island, a one-and-done. We also did a solicitation for a pair of specific ADA vans.

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Zavatsky, Drew (DES)

This is not an example a situation where you can use the reserved award strategy. You can only use the strategy when you're going to do multiple awards under a single solicitation. Here in this example, it's only a single award because you're only buying the one thing for McNeil Island, in the other example, the one purchase for two vans.

Next question.

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Mroz, Zoë (DES)

**Question #5** I think the question here is about small and veteran-owned businesses, and minority- and women-owned businesses - who can be awarded under this strategy? That is, what does "small" mean, what does "veteran" mean? And how do the minority- and women-owned businesses fit here?

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Zavatsky, Drew (DES)

**Answer #5** So, if you look at RCW 39.26.010(22), there are a couple of different options for determining whether or not something is a small business:

"Small business" means an in-state business, including a sole proprietorship, corporation, partnership, or other legal entity, that:

(a) Certifies, under penalty of perjury, that it is owned and operated independently from all other businesses and has either:

(i) **Fifty or fewer employees**; or

(ii) A gross **revenue of less than seven million dollars** annually as reported on its federal income tax return or its return filed with the department of revenue over the previous three consecutive years; or

(b) Is **certified** with the office of women and minority business enterprises (OMWBE).

With regard to veterans, RCW 43.60A.010(7) states that “veteran-owned certified business” means “a business that is certified by the [Department of Veterans Affairs] to be at least fifty-one percent owned and controlled by:

(a) A veteran . . . or

(b) An active or reserve member in any branch of the armed forces of the United States, including the national guard, coast guard, and armed forces reserves.

So, the strategy can be used when considering a small or veteran-owned business. But it is not for use with minority- or women-owned businesses because I-200 said that you cannot use those to provide a preference. What we're really saying is if it's a small business in terms of size or its income, or it's veteran-owned, those aren't protected classes and so you can use a reserved award strategy.

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Mroz, Zoë (DES)

Another question.

**Question #6** Does an agency need pre-approval from DES to bid out for multiple awards under one solicitation? If so, is there guidance and a template for getting DES approval?

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Zavatsky, Drew (DES)

**Answer #6** This is a great question, it anticipates one of our policies that are going to be coming out in the next year or so. The new policy will give guidance about convenience contracts. It's relevant because there's an intersection between convenience contracts and reserved award contracts. Let me explain.

There are two different types of convenience contracts. The first type is when an agency wants to set up a whole group of vendors for it to use to provide goods or services “on demand.” The second type of convenience contract is created when an agency wants to allow other agencies to use its contract with a vendor. This second type has some similarities to a statewide contract.

Note: all versions of convenience contracts have to be undertaken with the permission of DES, per RCW 39.26.070.

I do need to distinguish between a convenience contract and a multiple award contract.

A convenience contract requires you to get DES permission before you enter into it; a multiple award contract does not require DES permission. Also, in a multiple award contract, you know what work is being done by each vendor, whereas with setting up a vendor pool and a convenience contract, you're setting that vendor pool up, maybe without knowing the exact scope of work for each job.

Going forward, when we start drafting our policy on convenience contracts, we're going to be including the points we've just discussed. Until then, please call us.

Next question.

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Mroz, Zoë (DES)

**Question #7** If we have small diverse suppliers on our contracts, what can we share with them about

state agencies interest/directives to use small diverse businesses, can you provide more insight on small business spending goals or targets that agencies may be trying to meet?

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Zavatsky, Drew (DES)

**Answer #7** Yes. First of all, remember the context of this conversation is obtaining goods and services – not, for example, Public Works or Architecture & Engineering or Capital Projects. Second, regarding spending or spending targets? I want to remind everybody that OMWBE is currently setting the goods and services agency’s spending targets. In September, OMWBE went to agencies to discuss with them what each agency’s spending target is. And currently, the targets are all posted on the OMWBE website.

Next question.

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Mroz, Zoë (DES)

**Question #8** Would it be OK to add evaluation points for small/veteran businesses? Or would being a small/veteran business be the factor that would put them in the reserve category?

**Answer #8** Well, that’s a good question, which combines some of the supplier diversity policy strategies.

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Zavatsky, Drew (DES)

generally to

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Mroz, Zoë (DES)

Next question.

**Question #9** Section C.4, which is awarding contracts under 150,000, doesn't mention multiple award contracts. But isn't this section describing reserved awards? How does C.4 interact with the reserved award section?

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Zavatsky, Drew (DES)

**Answer #9** That’s interesting. I put the text of C.4 in the chat: [for a solicitation that will result in a contract of \$150,000 or less, “Determines the Apparent Successful Bidder . . . the highest responsive and responsible small or veteran-owned bidder that best meets the Competitive Solicitation requirements and presents the best value to the state, including price and other factors as set forth in the solicitation.”]

Let’s consider the hypothetical situation where you think you might use the reserved award strategy if you determine there will be multiple awards under a single solicitation. But, if the contract value will be \$150,000 or less, and will supply \$50,000 widgets in each of three different regions around the state, then. In that circumstance there is no reason to do a reserved award because the contract will go to a small or veteran-owned business anyway.

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Mroz, Zoë (DES)

One last question.



**Question #10** Can you provide an example of a reserved award that is not a convenience contract?

**Answer #10**

Alright, I think that is the bulk of our questions answered and we've just got one minute left. So, Drew, take it away.

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Zavatsky, Drew (DES)

Alright. Well, listen, thank you so much all for your time and attention. All of your questions help us refine what we've got. We are always practicing, "Plan. Do. Check. Act." and continually trying to improve the services we provide and the resources that we give. This is the 7th time for a Lunch 'n Learn session on the supplier diversity policy, and every single time we welcome the opportunity to expand our frequently asked questions. We are able to do this because we're getting a great dialogue and a great series of hypotheticals for why and how to apply a particular supplier diversity strategy in a particular area. So, I want to thank you all again for attending, and for your participation.

I want to thank Victoria and Jamie, you were excellent - great sports, you know, jumping in with both feet and I just really appreciate both of you. And as always, the person who makes it all possible, Zoë Mroz, thank you.