



Enterprise Services Policy No. POL-DES-090-09

# Purchasing Washington Grown Food Policy

## FREQUENTLY ASKED QUESTIONS

ORIGINAL PUBLISH DATE: February 20, 2019

REVISED DATE: November 15, 2024

**1. Question: Would you please provide sample language for soliciting Washington Grown Food?**

**Answer:** Yes. Please see below:

### EXHIBIT X – WASHINGTON GROWN FOOD PROCUREMENT STRATEGY

[Agency] is committed to purchasing Washington grown foods (RCW chap. 39.26.090). “Washington Grown” food is defined in RCW 15.64.060 as “grown and packed or processed in Washington.” In order to meet the requirements to provide Washington Grown foods, [Agency] will require proposer to commit to progressively source Washington Grown foods during the life of the contract. This component of the evaluation is based on responsiveness; a response with 0% and/or a response without progressive percentage commitments to Washington Grown foods will be considered non-responsive.

Accordingly, Proposers must complete Section 1 below by committing a percentage and describing their plan to attain that percentage.

#### **A. GOALS FOR WASHINGTON GROWN FOOD PROCUREMENT STRATEGY:**

With respect to trade agreements, such as those set by the World Trade Organization (WTO), [Agency] is calling on Proposers to evaluate their supply chain and provide Washington Grown products options for this resulting contract. Vendor shall outline their commitment to sourcing Washington Grown food over the life of the contract. Examples of increasing availability of Washington Grown foods on this contract include, but are not limited to:

- Growing partnerships with suppliers that sources Washington Grown foods
- Committing to sourcing seasonal foods from Washington
- Increasing overall commitment to sourcing market basket items to meet Washington Grown criteria.

#### **B. BY CATEGORY OUTLINE PERCENT COMMITMENT TO WASHINGTON GROWN FOOD:**

The goal is to commit to a percentage above zero (0) at the initial term, and then commit to progressively increasing Washington Grown food available on contract year over year.

<u>Year</u>	<u>Commitment (%)</u>	<u>Products</u>	<u>Plan</u>
1			
2			
3			

[FAQ published 02-20-2019]

**2. Question: Which is more important WA grown food or using the DES statewide contract?**

**Answer:** The policy addresses the purchase of Washington grown food. DES statewide contracts for food offer options which include Washington grown food. Agencies must use existing statewide contracts unless the contract cannot justifiably satisfy agency needs or the products available on the statewide contract are not from available Washington sources. If there are Washington grown food options outside of a statewide contract, this may be a reason why the contract may not justifiably meet an agency's needs as documented by the agency. Such documentation may include additional conditions indicated by the funding source. **[FAQ published 02-20-2019, Revised 11-15 -2024]**

**3. Question: When purchasing outside of a statewide contract, the Washington Grown Food must be of an equivalent or better quality than similar food available through the statewide contract. What quality standards are used in statewide contracts?**

**Answer:** Purchasers should review each statewide contract to confirm the quality standards that each contract requires. Generally, statewide contract food products must meet or exceed the standards of:

- [The United States Department of Agriculture \(USDA\)](#)
- [The U.S. Drug and Food Administration \(FDA\)](#)
- [The United States Department of Commerce \(USDC\)](#)
- Washington State, and standards and requirements set for by the industry. Such requirements include but are not limited to:
  - Food products must meet a freshness parameter so that the Purchasers have sufficient time from the date of delivery to consume the food service products before quality deteriorates.
  - Contractor shall comply with all standards and requirements regarding weights, measures, fill of containers, drained weights, contamination, and condition on delivery, of food service products.
- And/or provide value added considerations such as pack size, local produce varieties, and culturally relevant foods.

**[FAQ published 02-20-2019, Revised 11-15-2024]**

**4. Question: How do we know if purchasing Washington Grown Food is inconsistent with free trade agreements?**

**Answer:** Under the WTO GPA, the Washington Grown Food Policy is preempted whenever a purchase of food is \$476,000 or more. The dollar threshold is revised every two years and is published in the [Federal Register](#). **[FAQ published 02-20-2019, Revised 11-15-2024]**

**5. Question: What are the international trade commitments and how do they interact with this policy?**

**Answer:** The legislature added this language to prevent the geographic preference for locally grown food ("Washington Grown") established by the statute from conflicting with international treaties or other agreements entered into by the United States with foreign countries. The legislature apparently intended that the geographic preference in favor of purchasing Washington food give way when in conflict with any of these international commitments to avoid entangling the procurement in international trade disputes and comply with federal law.

Formal treaties ratified by Congress clearly qualify as international commitments. [Congressional-executive agreements](#) – commitments negotiated by the President or his representatives under congressional or executive authority without formal legislative ratification of the agreement, would also qualify as an international commitment. In modern foreign relations, the [majority of international commitments](#) are made by congressional-executive agreements with other nations. Either kind of international agreement will qualify under the exception in RCW 39.26.090(9), provided the subject matter of the commitment is International Trade - the exchange of good or services between nations. [FAQ published 02-20-2019]

**6. Question: What international trade agreement commitments may apply to government procurements under RCW 39.26.090(9)?**

**Answer:** Perhaps the most important trade commitments are various free trade agreements intended generally, to reduce barriers to international trade. These include:

- a) **General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO).** The GATT is a multiparty international agreement — signed originally in 1948 — that promotes international trade by lowering import duties and providing equal access to markets. More than 150 countries are parties to the agreement. The [WTO](#) is a body charged with enforcing the provisions of the GATT treaty composed of the signatory countries of the Uruguay Round of GATT negotiations, as well as other countries that have subsequently agreed to membership. One part of GATT of particular importance to state procurement is the [Revised Agreement on Government Procurement \(GPA\)](#). [Forty-seven \(47\) countries](#), including the United States, are currently signatories to the GPA. The state of Washington and executive branch state agencies acquiring goods and services over predefined dollar thresholds must comply with the requirements of the GPA.
- b) **North American Free Trade Agreement (NAFTA) and the United States- Mexico-Canada Agreement (USMCA).** NAFTA is a comprehensive trade agreement that creates an integrated market for goods and services between the United States, Canada, and Mexico. In addition to removing tariffs on trade between the three countries, NAFTA contains provisions dealing with a host of other issues. Like the WTO, chapter 10 of NAFTA contains provisions relating to government procurement. In 2010, the United States and Canada entered into a separate bilateral agreement clarifying the application of the WTO Revised Agreement on Government Procurement to states and provincial governments. On November 30, 2018, the United States, Mexico, and Canada signed an update to NAFTA, the USMCA. The agreement has not yet gone into effect. Chapter 13 of the USMCA, which addresses government procurement, applies only as between Mexico (which is not a member of the WTO) and the United States, and does not affect Washington State.
- c) **Other regional or bilateral free trade agreements.** In addition to NAFTA, the United States is a party to the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR) and other regional or bilateral free trade agreements involving 20 countries. These are: [Australia](#) [Bahrain](#) [Canada](#) [Chile](#) [Colombia](#) [Costa Rica](#) [Dominican Republic](#) [El Salvador](#) [Guatemala](#) [Honduras](#) [Israel](#) [Jordan](#) [Korea](#) [Mexico](#) [Morocco](#) [Nicaragua](#) [Oman](#) [Panama](#) [Peru](#) [Singapore](#). A List of the countries involved and [links to these treaties](#) can be found at the web site of the United State Trade Representative. Where these regional and bilateral free trade agreements address government procurement, they generally work in a similar fashion, following the model of the WTO Revised Agreement of Government Procurement. There are

differences in the language from agreement to Agreement, which should be reviewed when conducting a transaction with a party from a covered country.

- d) Other international trade agreements that may conflict with the preference for Washington Grown food. The free trade agreements described above are not the only international trade agreement commitments binding on the United States. For example, there are Commodity Specific Agreements dealing with specific agricultural products, such as sugar or milk. While such agreements do not directly address government procurement, they may contain provisions that could affect preferences for domestic or local products. Agencies should become familiar with the market for the transaction in question.

**[FAQ published 02-20-2019]**

**7. Question: Where can I find out more about international trade agreements that may affect my transaction?**

**Answer:** The United States Trade Representative maintains web pages on foreign trade agreements to which the United States is a party:

- [United States Trade Representative Trade Agreements](#)
- United State Census Bureau maintains statistics on foreign Trade. [U.S. Census Bureau foreign-trade guide](#)
- United States International Trade Commission. [United States International Trade Commission](#)
- United States Department of Agriculture. [United States Department of Agriculture](#)

**[FAQ published 02-20-2019]**

**8. Question: I could not locate Washington-grown foods on the DES Statewide contracts. How can I locate alternative vendors that sell Washington-grown food to meet the goals of this policy?**

**Answer:** As a starting point, ask the DES contracted vendors for information on what Washington grown foods they can provide. Note that there is currently no single labeling or certification system for Washington-grown foods. The best way to locate Washington-grown food is through market research and contacting vendors who are local to the area where the food is being purchased and/or utilized. If asked, a vendor should be able to tell you if the products you seek were grown on a farm or ranch in Washington. There are many listings of farms and food vendors that can provide Washington-grown products. Here are a few that you may find helpful as you research potential suppliers:

- A number of organizations collaborate on the [Eat Local First: WA Food and Farm Finder](#) where you can search for food that is grown, caught, raised, or made in Washington State.
- The Washington State Farmers Market Association [maintains a map](#) of farmers markets. Many farmers markets provide listings of their vendors on their websites.
- At the county level, [WSU Extension offices](#) and County Agricultural programs may be able to direct you to listings of farms in their regions.

**[FAQ published 11-15-2024]**

**9. Question: What can agencies do to locate and purchase from Washington small and diverse food**

**producers/vendors?**

**Answer:** Agencies are encouraged to work with DES, WSDA, OMWBE, and other relevant organizations to identify and support capacity-building initiatives for small, underrepresented, and historically disadvantaged food producers in Washington.

To reduce barriers for non-English speaking producers, agencies are expected to make reasonable efforts to provide information about food purchasing opportunities in multiple languages and formats accessible to diverse Washington food producers.

**[FAQ published 11-15-2024]**

**10. Question: What is the plan that must be in all food contracts to maximize the availability of Washington grown food purchased through contracts?**

**Answer:** The following are some suggested steps to help agencies develop a plan to maximize the availability of Washington grown food purchased through contracts:

- a. Work with the Washington State Department of Agriculture (WSDA), Department of Enterprise Services (DES), Office of Minority and Women’s Business Enterprises (OMWBE), and the Washington State Office of Equity Pro-Equity Anti-Racism (PEAR) Equity Hub Food Systems, and community-based food networks to identify Washington food producers and/or underrepresented, and historically disadvantaged food producers in Washington.
- b. Outline information in the solicitation and contract that describes what actions will be taken to promote participation of Washington grown food sources.
  - i. Outreach activities performed by the agency (refer to FAQ #8, 9, #10.a).
  - ii. Consider utilizing a Washington grown food procurement strategy in the solicitation/contract (refer to FAQ #1).
- c. To the extent possible, ensure that the plan is consistent with international trade agreements (refer to FAQs #5 through #7).
- d. The plan must be a component of the resulting contract document.
- e. Document the compliance with the plan in the contract file.

**[FAQ published 11-15-2024]**

**11. Question: How do I report purchases of Washington grown food?**

**Answer:** If a purchase was made using a statewide contract, no reporting is necessary, as DES is working with the statewide contractors to provide reporting against statewide contract purchases. However, if the purchase is outside of a statewide contract, then the purchase will need to be tracked and reported using the Washington Electronic Business Solutions (WEBS).

**[FAQ published 11-15-2024]**

**12. Question: How do I document compliance with this policy?**

**Answer:** Agencies are first required to use relevant DES statewide and DES-approved cooperative contracts when making food purchases. Agencies are directed to use their discretion and good,

sound judgment when making the decision to **not** purchase from a statewide contract. For example: the product available from the statewide contract is not available from Washington sources or does not meet the required 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 their small, veteran owned and diverse spend. If these options are not available on a statewide contract and an agency has identified a spend option that meets its needs and complies with all procurement rules, then the agency would be justified to purchase outside of a statewide contract. The reasons justifying the off-contract purchase should be documented, as appropriate, and saved in the contract file.

If an agency has documented that the product(s) available from the statewide contract are not available from Washington sources, agencies are excepted from competition; provided, the purchase of Washington grown food purchased off-contract must be of an equivalent or better quality than similar food available through the statewide contract.

If an agency has documented that the statewide contract will not meet its needs (does not meet the required 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.)), agencies should compete the purchase (unless another exception applies). When creating a competitive solicitation in Washington Electronic Business Solution (WEBS), agencies should check the "Yes" box when the Purchases of Washington Grown Foods policy will apply to the solicitation. Agencies are also encouraged to document contract plans for acquiring Washington grown food (see FAQ #10).

**[FAQ published 11-15-2024]**