



# **Procurement Reform**

## **2SHB 2452 → RCW 39.26**

*Procurement for the State of Washington  
Information Processing Managers' Association  
September 26, 2012*

# Department of Enterprise Services

## Department of Enterprise Services

2012/13—2014/15 Strategic Clarity

DES STRATEGIC ANCHORS	DES VALUES		
<p><b>VISION:</b> We enable government to best serve the people of Washington.</p> <p><b>MISSION:</b> To deliver innovative business solutions and services to meet the needs of those we serve.</p> <p><b>OUR UNIQUE VALUE:</b> We deliver innovative, responsive, cost-effective and integrated services that our customers need. <i>"What you need. How you need it. When you need it."</i></p> <p><b>OUR CUSTOMERS FEEL:</b> Reassured, Confident, Encouraged, Respected, Satisfied, Successful. <i>"We've got your back."</i></p>	<p><b>Openness</b> We communicate honestly and respectfully with our customers and coworkers to promote understanding and productivity.</p>	<p><b>Integrity</b> We act consistently with honesty, fairness, accountability and the highest ethical standards.</p>	<p><b>Collaboration</b> We work inclusively with each other and with those we serve to achieve our goals.</p>
	<p><b>Respect</b> We treat our customers and coworkers with professionalism, courtesy and respect.</p>	<p><b>Excellence</b> We exemplify teamwork, commitment and responsiveness in the pursuit of excellence in providing our services.</p>	<p><b>Innovation</b> We encourage informed and creative risk-taking in developing solutions that benefit those we serve.</p>

### DES GOALS

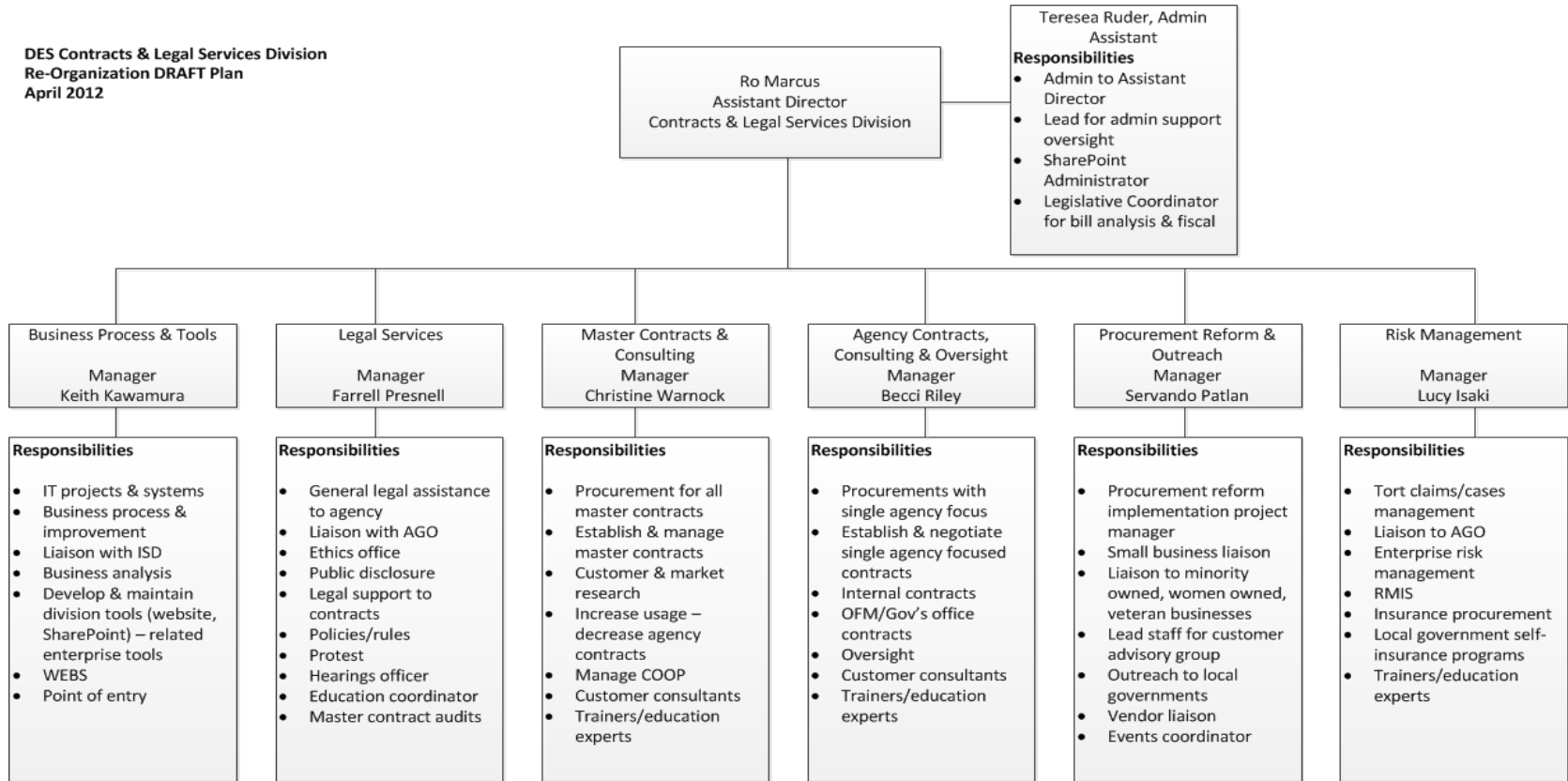


December 2011



# Contracts & Legal Services Division

DES Contracts & Legal Services Division  
Re-Organization DRAFT Plan  
April 2012



As of April 9, 2012



# *Procurement Reform Positioning*

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- June 1, 2006 Procure To Pay Value Proposition Recommended Changes To Prepare for Modern Financial Systems
- HB 1770 Enhance WA Small Business Participation
- ESSB 5931 creating the Department of Enterprise Services (DES)
- HB 2452 Procurement Reform Bill



# *2012 Procurement Reform Legislation 2SHB 2452*

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- Incorporates comments from outreach and state agencies
- Supported by state agencies, labor, small business and OMWBE Ad Hoc Advisory Committee
- Passed legislature and signed by Governor (2SHB 2452) on March 30, 2012
- Coded as RCW 39.26



# *2012 Procurement Reform Legislation 2SHB 2452*

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- Combines 3 statutory chapters RCW 43.19, RCW 43.105, and RCW39.29 into one new chapter RCW 39.26, that will govern all state procurements for goods and services.
- Makes procurement process more transparent, competitive and efficient.  
Effective January 1, 2013



# *What Will Be Different?*

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1. A common approach for the procurement of all goods and services will be developed.
2. Requires training for all employees who develop, manage or execute contracts.
3. Oversight of all sole source contracts, except those otherwise exempt, in place of oversight of only personal services contracts.
4. Contractors and agencies will be allowed to submit bid documents and signatures electronically for ease of transaction.



## *What Will Be Different?*

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5. Allows use of best value criteria to award contracts.
6. Agencies will notify bidders and identify awarded contractors in a central system.
7. Agencies will post information about awarded contracts with DES so the public can see basic information about all awarded contracts on a single site.
8. DES will be able to debar contractors for cause.





## *What Will Be The Same?*

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1. The bill keeps the same exemptions for the Legislature, higher education, public hospitals, client services and the data center as in current law.
2. DES will establish rules and guidelines for procurement of goods and services.
3. Agencies can continue to make emergency purchases, direct buy purchases and negotiate contracts when appropriate.



# *Implementation Timeline*

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- April
  - Convene Advisory Committee
  - Identify workgroup leads and members
- May/June
  - Weekly meetings for workgroups
  - Monthly meetings for Advisory Committee (continue through October)
- July/August
  - Begin formal rulemaking



# *Implementation Timeline*

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- July/August continued
  - Policy development outreach
- September/October
  - Finalize and adopt rules and policies
  - Plan for training on implementation
- November/December
  - Agency implementation
- January 1, 2013 – Effective Date



# *GUIDING PRINCIPLES FOR PROCUREMENT REFORM IMPLEMENTATION*

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The implementation of procurement reform should ensure a process that **promotes competition** and **is transparent**.

The process should facilitate easy **access and availability to information about procurements and contracts**.

The process should model the **highest ethical standards** and ensure accountability from both state employees and vendors.

**The process should encourage and facilitate the participation of Washington small businesses.**



# *The new procurement processes should balance these 13 factors*

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1. BE FAIR (Marked by impartiality and honesty; free from self-interest, prejudice or favoritism.)
2. BE COMPETITIVE (Encourage two or more entities, acting independently, to secure the business.)
3. BE ABLE TO OBTAIN A FAIR AND REASONABLE PRICE
4. TRANSPARENT (Free from pretense, readily understood, information that is visible and accessible.)



# *The new procurement processes should balance these 13 factors*

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5. COST EFFECTIVE AND EFFICIENT (Including reducing forms & paperwork)
6. TIMELY (Process should be appropriate for the industry and value of the contract)
7. BE ACCOUNTABLE AND PROVIDE FOR THE HIGHEST ETHICAL STANDARDS
8. BE FLEXIBLE (Readily capable of adapting to new, different or changing requirements.)
9. SIMPLIFIED (No more complex than needed for the subject of the procurement.)



# *The new procurement processes should balance these 13 factors*

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10. PROVIDE OPPORTUNITIES TO THE BUSINESS COMMUNITY WHILE PROMOTING SMALL BUSINESS PARTICIPATION
11. BE INNOVATIVE (Push the envelope and be creative)
12. DOESN'T OVER REGULATE, EMPLOYS BEST PRACTICES
13. SEEKS BEST VALUE IN THE SELECTION PROCESS



## *Next Steps*

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- DES rule making started August 1, 2012 for debarment WSR 12-16-098
- Advisory Group directed Work Groups to cast recommendations in the form of qualification criteria for the risk matrix profile
- DES will issue the new policies and rules in fall 2012, so that agencies have time to adopt their own corresponding policies before the new law takes effect.





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# Making the Case for Information Technology Procurement



# Procurement Reform IT Work Group

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**Ro Marcus** Assistant Director,  
Contracts and Legal Services  
DES

**Tom Parma**, Senior Policy and IT  
Consultant OCIO

**Becci Riley**, Agency Contracts,  
Consulting and Oversight  
Manager DES

**Bryce Carlen** ESD

**Melissa Rohwedder**, CIO DOL

**Larry Dzieza** OCIO

**Bob Zych** OCIO

**Rebekah O'Hara** CTS

**Susan DeBlasio** HCA

**Dawn Bernard** WSU

**Mark Barkley** DOT

**Susan Banton**, Purchasing  
Supervisor WWU

**Clare Donahue**, Associate Vice  
President UW

**Suzanne Shaw**, Senior Counsel  
ATG

**Bill Norris**, Deputy CIO DOH

**Jerry Britcher**, Enterprise  
Architecture and Portfolio  
Manager DSHS

**Farrell Presnell**, Legal Services  
Manager DES

**Jim Gayton**, Contracts Attorney  
DES

**Teresa Sapp**, IT Specialist DOC



## *Some IT Work Group Thoughts*

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- Create opportunity for creative and streamlined procurement processes
- Focus procurement negotiation strategies for software and data transformation technology
- Use best procurement process for the IT product being procured



## OCIO Coordinating Documents

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- [http://www.ofm.wa.gov/budget/instructions/operating/2013\\_15/2013-15\\_instructions.pdf](http://www.ofm.wa.gov/budget/instructions/operating/2013_15/2013-15_instructions.pdf)
  - Chapter 12 Statewide Enterprise Approach for Information Technology Operation and Investment (**Major Project Defined**)
- <http://www.ofm.wa.gov/ocio/policies/manual.asp>
  - Chapter 120 Information Technology Investments Policy Number 121 (**Public notice level by dollar threshold**)



# *IT Recommendation Pre-procurement*

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- **Market research**, including consultation with independent research organizations.
- **Discussions** with similarly situated public or private entities who have procured similar products/services.
- **Meetings with vendors**, which may include demonstrations of products. Discussions with vendors can help determine the size of the market and capability of the vendors to deliver a particular product or service and help the state design requirements that vendors are capable of meeting. State staff should be mindful of the broad public disclosure obligations imposed by Washington law and be mindful that records of such meetings may be disclosed under the Public Records Act. Vendor meetings should be conducted in advance of any formal RFP process.
- **Publication of a Request for Information (RFI)** to solicit information using a structured format and process. A RFI is not an acquisition vehicle but can be a useful information-gathering tool.



## *IT Recommendation for R & D*

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- Short term contracts to test products
- Partnering with a vendor to explore new products or services to solve a problem
- Hosting a site where agencies can share information and research on products, vendors, problems and proposed solutions
- Developing a fair evaluation process/rate system to alert others about products, vendors or solutions.



## *IT Recommendation for Click Agreements*

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- If agencies want to agree to click through agreements, best practices should be put in place to help agencies develop their own policies on who can enter into the agreement, when, how, etc.



## *IT Recommendation for using a Risk Matrix*

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- Developing a procurement plan, procurement process and contract terms and conditions by using a risk matrix to assess IT procurements and projects will better focus resources where it is needed and will help in the development of the best procurement process.





## *IT Recommendation for Competition*

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- Information to vendors
- Clear specifications and requirements
- Evaluations based on the specifications
- Reasonable/adequate time for vendors to respond to inquiry
- Unbiased evaluators
- Everyone has access to the same information
- Process has one coordinator to direct the process



# *IT Recommendation for Multiple Models*

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- Rolling process that allows prequalified vendor lists to be kept up-to-date in regards to who is included, what is included, and pricing
- For master and convenience contracts, you can keep a procurement open and provide vendors the ability to submit proposals throughout the year, or at given times during the year.
- Process that includes a Best and Final Offer (BAFO) process as an option
- A two tiered sealed bid process, where the sealed bid allows you to evaluate and narrow the field and the second tier would allow you to have new bids on price or other requirements on a smaller subset of the bidders.
- Reverse auction process



# *IT Recommendation for Prequalified Vendors*

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- Convenience
- Clear specifications and requirements
- Evaluations based on the specifications
- Reasonable/adequate time for vendors to respond to inquiry
- Unbiased evaluators
- Everyone has access to the same information
- Process has one coordinator to direct the process



# *IT Recommendation for Guidance & Training*

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- Public Notice
- Non-disclosure Agreements
- Pre-qualified Vendor Lists
- Master Contract Ceiling Price Negotiations
- BAFO, Best Value, and other price negotiation strategies
- Protest
- WTO



## *IT Recommendation for Guidance & Training*

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- Acquisition of low risk COTS software
- Acquisition of medium risk niche software
- Acquisition of enterprise level software
- Acquisition of software as a service



# *IT Recommendation for Guidance & Training*

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- Staff Training for IT Procurement and Contracting
  - Recognition for general procurement staff
  - Specialized training for technology procurement staff
  - Collaborative Training for IT, Business, & Contracting Staff



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# Making the Case - Small Business Procurement



# *Small Business Participation Improvement Priority*

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- Section 1 Intent of the procurement reform legislation, concludes with the following sentence:

“In addition, the legislature intends that the state develop procurement policies, procedures, and materials that encourage and facilitate state agency purchase of goods and services from Washington small businesses.”





## *How do I know a Small Business?*

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- 2011 HB 1770 Established the first definition for a Washington Small Business
- WEBS provides vendors the qualifying criteria and allows vendors to self identify as a small business
- <http://www.ga.wa.gov/WeBS/index.html>



## *How do I know a Small Business?*

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- 2012 2SHB 2452 Modified that definition and created 2 additional types of small business classifications:
  - Mini-Business
  - Micro-Business
- WEBS will be updated with new qualifying criteria and vendors will be notified to verify if they still qualify so vendors can self identify as a small business



## *No Small Business State Certification or Procurement Preference*

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- The legislature did not provide a certifying authority for Washington Small Business
  - OMWBE certifies businesses as owned by women, minority, or women and minority
  - Department of Veterans Affairs (DVA) certifies businesses as veteran owned
- There is no legal preference for doing business with businesses certified by OMWBE, or DVA, or a self identified Washington Small Business



# *Agency Procurement Authority Impacts*

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## **RCW 39.26 Procurement Law Addresses Many Vendor Concerns, including:**

- Agency success purchasing from Washington Small Businesses
- Debarment for vendor non-performance
- Notice to vendors of contracts, contract awards, and inspection of sole source determinations prior to contract
- Paperless purchasing & contracting



# *Agency Procurement Authority Impacts*

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- An agency procurement and contracting risk assessment is being considered as a basis for the level of purchasing and contracting authority delegated to specific state agencies
- Given the strong legislative intent for procurement reform to facilitate business with Washington Small Businesses, agency success in contracting and purchasing with Washington Small Business is likely to become an important component of the risk assessment



## *Small Business Barriers in IT*

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- Number of years in business requirements biases against start-up firms
- Firm size requirements bias against sole proprietorships
- Number of years of state experience requirements bias against firms with federal experience sufficient to meet state needs
- Excess insurance & bond requirements for the project risk, e.g. a \$3M umbrella policy will cost \$6,000 a year, a \$1M bond can cost \$50,000



# *Procurement Reform Questions*

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- Lead - Servando Patlan
- Department of Enterprise Services
- Email [servando.patlan@des.wa.gov](mailto:servando.patlan@des.wa.gov)
- Phone 360-407-9390

Visit the Procurement Reform Website at

[http://www.des.wa.gov/Procurement\\_reform](http://www.des.wa.gov/Procurement_reform)

