



15.10

General Policies for Acquiring Personal Services from Outside Consultants

15.10.10

July 1, 2007

Authority for these policies

State agencies must process personal service contracts in accordance with the requirements of chapter 39.29 RCW. Chapter 15 forms the uniform guidelines required by RCW 39.29.100 for the effective and efficient management of personal service contracts.

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Special definitions

Agency – Any state office or activity of the executive and judicial branches of state government, including state agencies, departments, offices, divisions, boards, and commissions, and educational, correctional, and other types of institutions.

Approval – OFM's authority to analyze the filed contract or amendment and to approve or disapprove based on compliance with the competitive procurement, filing and other requirements of chapter 39.29 RCW.

Client Services – Services provided directly to agency clients including, but not limited to, medical and dental services, employment and training programs, residential care, and subsidized housing. Clients are considered to be those individuals who the agency has statutory responsibility to serve, protect, or oversee.

Competitive Solicitation – A documented formal process for award of personal service contracts of \$20,000 or more that provides an equal and open opportunity to multiple qualified parties. The solicitation culminates in the selection of a contractor based on evaluation criteria set forth in the solicitation document that may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

Contract Management – Activities related to contracting, including the decision to contract, contractor screening and selection, contract preparation, contract monitoring, auditing and post-contract follow-up.

Personal Service Contracts

Contract Manager – Any state agency staff involved in the contracting process who is responsible for oversight of a contract (e.g. contract specialists, program managers, state agency executives, etc).

Contract Monitoring – Planned, ongoing or periodic activity that measures and ensures contractor compliance with the terms, conditions, and requirements of a contract.

Consultant – An independent individual or entity contracting with an agency to perform personal services by rendering an opinion or making a recommendation according to the consultant's methods without being subject to the control of the agency except as to the result of the work. The agency monitors progress under the contract and authorizes payment. The term, “contractor,” is also used in this policy and is generally used in personal service contracts.

Contractor – Any business entity, whether a sole proprietor, partnership, corporation, etc., that is providing personal services to state agencies.

Emergency – A set of unforeseen circumstances beyond the control of the agency that either: (1) presents a real, immediate threat to the proper performance of essential agency functions or (2) may result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

Evidence of Competition – Documentation demonstrating that the agency has solicited responses from multiple firms (minimum of three) in selecting a consultant for personal services in the amount of \$5,000 to \$19,999.

Filing – Submission of a personal service contract or amendment, with written justification, to the Office of Financial Management for review or approval and to be made available for public inspection.

Firm – Any business entity, whether a sole proprietor, partnership, corporation, etc., that is interested in providing personal services to state agencies. May also be called a “business,” or a qualified “party.” Also referred to as a “proposer” or “bidder” after a proposal or bid is submitted to an agency in response to a competitive procurement.

Personal Service – Professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement. This term does not include purchased services as defined below.

Personal Service Contracts

Personal Service Contract – An agreement, or any amendment thereto, with a consultant (contractor) for the rendering of personal services. Personal service contracts may render services to state agencies, businesses, providers, other contractors, etc. If, however, services are provided **directly** to agency clients, the contracts are classified as client service contracts.

Proposal – A document submitted by a firm in response to an informal or formal competitive solicitation issued by an agency. Also called a “bid.”

Proposer – A firm or individual submitting a proposal (or bid) in response to a competitive solicitation for personal services.

Purchased Services – Services provided by a vendor to accomplish routine, continuing, and necessary functions. Generally, these services meet more ongoing needs of an agency for general support activities. This term includes, but is not limited to, services acquired under RCW 43.19.190, the authority of the Department of General Administration (GA), Office of State Procurement, or RCW 43.105.041, the authority of the Information Services Board (ISB).

Examples of GA purchased services include delivery/courier services, equipment rental, janitorial services, standard laboratory tests, laundry services, and towing services.

Examples of ISB purchased services include computer programming, technology support, computer hardware and software maintenance, software installation, data entry, operation of a physical plant, and standard IT training related to hardware or software in use by an agency.

Review – OFM's authority to analyze the filed contract or amendment based on compliance with the competitive procurement, filing and other requirements of chapter 39.29 RCW. “Review” does not authorize OFM to approve or disapprove the contract filing; however, OFM may request additional information and make suggestions regarding the filed contract or amendment.

Sole Source – Contract awarded without competition, because the consultant providing the professional or technical expertise has skills, knowledge or ability of such a unique nature that the consultant is clearly and justifiably the only practical source to provide the service. The sole source award may also be based on the uniqueness or highly specialized nature of the services, sole availability of a consultant at the location required, or other special circumstance.

State Funded – Funded with dollars that are: (1) appropriated by the Washington State Legislature and/or (2) allotted by the agency.

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Contracts exempt from the requirements of chapter 39.29 RCW

If the primary purpose or nature of a contract is in one of the categories described below, that contract is exempt from the requirements of chapter 39.29 RCW, including competitive procurement and filing.

Exception: RCW 41.06.142, effective July 1, 2005, does not exempt the categories of services below from civil service competitive contracting, with one exception. If agencies want to consider the categories of services described in this subsection for competitive contracting they may, with the one exception of Interlocal agreements, referred in Subsection 15.10.20.c. Most of the services in the below exemptions are provided by contractors, but state employees do provide some of these types of services.

15.10.20.a

Contracts Totaling Less than \$5,000. Personal service contracts with a value of less than \$5,000 are exempt. However, two factors are to be considered under this exemption:

1. Competition is not required for personal service contracts under \$5,000, but it is advisable to use a competitive process whenever possible.
2. When the cumulative total of sole source personal service contracts and amendments awarded to a contractor by an agency (including all agency divisions) in a state fiscal year reaches \$5,000 or greater, the contract or amendment that brings the total to or over the \$5,000 amount, is subject to filing, regardless of its individual amount. Subsequent sole source contracts of less than \$5,000 and amendments awarded to that contractor in the fiscal year are also subject to filing regardless of their individual amount.

When a sole source contract of less than \$5,000 is awarded in one fiscal year and amended to add funds in another fiscal year, the total value of the amended contract is considered toward the cumulative total in the fiscal year of the executed amendment.

For example, if a sole source contract is awarded in the amount of \$3,000 in one fiscal year, and the contract is amended to add \$2,000 in a subsequent fiscal year, the amendment is subject to filing since the total amended amount of the contract is now \$5,000. In the same example, if the amendment was awarded for \$1,000, it would not be subject to filing (if there were no other sole source contracts awarded to the contractor already that fiscal year which would cause the cumulative total of sole source awards to be \$5,000 or more).

Personal Service Contracts

If a second contract for \$1,000 was awarded to the contractor in the same fiscal year, the second contract would be subject to filing since the amount of the first amended contract is \$4,000 and the amount of the second contract is \$1,000, which cumulatively amounts to \$5,000. (For institutions of higher education, the cumulative amount is calculated differently. Refer to Subsection 15.30.25.a.) Agencies are to track personal service contracts under \$5,000, so they will know when the filing threshold is met.

Personal service contracts that are **competitively** awarded to the contractor in the state fiscal year are not included in this cumulative sole source total.

- 15.10.20.b **Contracts Subject to Tariff.** This exemption is limited to contracts where the fee with a contractor is pre-established by tariff set by the Washington Utilities and Transportation Commission or other public entity and, therefore, the fee structure is fixed. This exemption does not apply to contracts with the contractor where no fixed rate structure is imposed.
- 15.10.20.c **Interlocal Agreements.** This exemption includes contracts between Washington State agencies or between a Washington State agency and either a unit of local government, another state, the federal government, or an Indian Tribe recognized by the federal government. These contracts may also be referred to as intergovernmental or interagency agreements. More information is available in chapter 39.34 RCW of the Interlocal Cooperation Act.
- 15.10.20.d **Services for a Standard Fee.** This exemption applies when a standard fee is established by the contracting agency or any other governmental entity, and a like contract for the standard fee for equivalent services is available to all qualified (available and responsive) applicants as services are required. Standard fees may include hourly or daily rates or similar fee-for-service rates (e.g. doctors or dentists who agree to provide services to state agency clients at a rate established by the agency and hearings examiners who conduct hearings for a set rate).
- 15.10.20.e **Contracts for Collaborative Research.** This exemption may be used when an agency is applying for grant or research funds (i.e. from a private foundation or the federal government, etc. and names a firm or individual in the written application to perform specific services. Upon approval from the funding source and receipt of funds, the resultant contract with the named firm or individual is not required to be competitively awarded or filed with OFM, nor does it require approval by OFM.

Personal Service Contracts

This exemption is only applicable when the agency applies for specific funding and names the contractor(s) in the funding or grant application **and** retains documented justification of the reason(s) for their selection.

Typically, contractors named in the application would be those that will provide specialized services and whose participation is considered key to project success. Conversely, contractors that provide more general services that would not impact the successful completion of the project and whose types of services are readily available from multiple firms should not be named in a grant or funding application.

If a funding authority initiates an agency contract process by providing funds to an agency and requires the agency to utilize a specific contractor, the subsequent agency contract would not fit under this exemption. It would be designated as a sole source and filed with OFM, if it meets the filing thresholds. In this instance, a sole source advertisement would **not** be required if the contract is for \$20,000 or more, since the funding source mandated the contractor to use as a condition of the award. Refer to Subsection 15.20.60.c.

15.10.20.f

Contracts for Client Services. This exemption applies to client service contracts. Client service contracts are awarded for professional or technical services to be provided by a contractor or person **external** to state government that will result in the delivery of **direct** services to agency clients. Clients are members of the public, external to state government, who have social, physical, medical, economic, or educational needs. For a more complete definition, refer to Subsection 16.10.20. Client services are defined in RCW 39.29.006(2) as services provided directly to agency clients including, but not limited to, medical and dental services, employment and training programs, residential care, and subsidized housing. Clients are considered to be those individuals the agency has statutory responsibility to serve, protect, or oversee. (Refer to Chapter 16 for more information on client service contracts.)

15.10.20.g

Contracts for Architectural and Engineering Services. This exemption applies to contracts for architectural and engineering services as defined in RCW 39.80.020, and awarded pursuant to chapter 39.80 RCW.

However, contracts awarded by any state agency for architectural and engineering services, and their amendments, are to be reported to OFM per RCW 39.80.070. The reports are to be submitted quarterly to OFM through the Personal Service Contracts Database (PSCD).

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- 15.10.20.h **Contracts for Expert Witness Services.** Expert witness contracts are those awarded when a subject matter expert is requested to testify as an expert witness for the purpose of litigation or an administrative hearing. The exemption should be used only when a lawsuit or request for an administrative hearing has been filed or there is a known potential lawsuit or administrative hearing for which expert witness services are needed. It should not be used when expert witness services are included as an add-on service strictly as a precautionary measure, in case a lawsuit or request for an administrative hearing could be filed as a result of the contractor's study, research or results.
- Expert witness contracts may also include case consultation, research, legal services, or other related activities, but the purpose of the contract ultimately must be for expert witness testimony if the case goes to litigation or to an administrative hearing. An expert witness is someone who is a subject matter expert or has particular knowledge or skills related to a subject, not necessarily any person who might be called to testify in relation to a specific case. This exemption does not include lay witnesses.
- 15.10.20.i **Contracts for Bank Supervision.** These are contracts entered into by the Department of Financial Institutions to conduct examinations of branches of out-of-state banks that are operating in Washington State, per RCW 30.38.040.
- 15.10.20.j **Contracts for Interpreter Services and Interpreter Brokerage Services.** Contracts for interpreter services and interpreter brokerage services are exempt when awarded on behalf of agency clients who are recipients of public assistance and who either have limited English-speaking skills or are sensory-impaired applicants. This applies primarily to clients of the Department of Social and Health Services.

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Agency responsibilities

State agencies subject to chapter 39.29 RCW are authorized to expend funds for personal service contracts only when the agencies have complied with the competitive procurement and other requirements of the chapter.

The agency director or authorized designee has full responsibility for securing outside contractual help, as required by that agency, in the most effective and economical manner possible. The state officer or employee executing personal service contracts is responsible for ensuring that personal services are procured in accordance with chapter 39.29 RCW.

In addition, those who execute personal service contracts are required to complete personal service contract training. Refer to Subsection 15.10.55.

15.10.30

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Limitations on personal service contracts**15.10.30.a**

Agencies are to procure personal services only to resolve particular agency problems or issues or to expedite specific projects that are temporary in nature. Prior to procuring personal services valued at \$5,000 or more, the agency must document that:

- The service is critical to agency responsibilities or operations or is mandated or authorized by the Washington State Legislature.
- Sufficient staffing or expertise is not available within the agency to perform the service.
- Other qualified public resources (governmental entities) are not available to perform the service either more efficiently or more cost effectively.

Contracts filed with OFM must include this information in the justification submitted with the filing.

Exception: Personal service contracts awarded as a result of civil service competitive contracting under RCW 41.06.142 and chapter 236-51 WAC, are not subject to the second and third factors in this subsection. Documentation for such will not be required when filing a personal service contract awarded under RCW 41.06.142.

15.10.30.b A state agency may not enter into a personal service contract under which the contractor could charge additional costs to the agency, the Joint Legislative Audit and Review Committee, or the Office of the State Auditor (SAO) for access to data generated under the contract.

For purposes of this requirement, “data” includes all information that supports the findings, conclusions and recommendations of the contractor’s reports, including computer models and the methodology for those models.

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Consequences for non-compliance

RCW 39.29.020 provides for a civil penalty for failure to comply with the requirements of chapter 39.29 RCW. The state officer or employee executing personal service contracts shall be responsible for compliance with the requirements of the chapter. Failure to comply shall subject the state officer or employee to a civil penalty in the amount of \$300. A consultant (contractor) who knowingly violates this chapter in seeking or performing work under a personal service contract shall be subject to a civil penalty of \$300 or 25 percent of the amount of the contract, whichever is greater.

The State Auditor’s Office is responsible for auditing violations and the Attorney General’s Office is responsible for prosecuting violations of chapter 39.29 RCW.

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Consider using public resources

Agencies must consider the feasibility of using qualified public resources before using a private consultant. The following are public resources which may be available to assist state agencies:

- Employees from within the agency;
- Employees from other Washington State agencies with specialized skills, knowledge, or abilities; and
- Federal, state, and local government employees with similar functional responsibilities and which have conducted similar projects.

Under the 2002 Personnel System Reform Act, agencies are not restricted from contracting for services traditionally and historically provided by state employees.

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Potentially displaced state employees are notified of the business problem or advantage the agency is seeking to address. The employees are then given the opportunity to formally offer improvements (alternatives) to current processes. After management review of the employee proposal, the agency then makes the decision whether to implement the employee proposed improvements or to proceed with competitive contracting. For more information on civil service competitive contracting, refer to the following website at: <http://www.washingtonworks.wa.gov>.

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Expenditure coding for personal service contracts

Subobjects to be used for reporting expenditures against personal services are as follows:

CA	Management and Organizational Services
CB	Legal and Expert Witness Services
CC	Financial Services
CD	Computer and Information Services
CE	Social Research Services
CF	Technical Research Services
CG	Marketing Services
CH	Communication Services
CJ	Employee Training Services
CK	Recruiting Services
CZ	Other Personal Services

Definitions for these subobjects are included in Subsection 75.70.20.

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Office of Minority and Women's Business Enterprises

Chapter 39.19 RCW requires agencies and educational institutions to ensure that businesses owned and controlled by minorities (MBEs) and women (WBEs) are afforded the maximum practical opportunity to contract directly and/or to subcontract with the state and to meaningfully participate on state contracts.

The Office of Minority and Women's Business Enterprises (OMWBE) sets annual voluntary participation goals for agencies and educational institutions by class of contract. The current goals for personal (professional) services are 10 percent for MBEs and 4 percent for WBEs. Agencies may set their own internal voluntary goals at either higher or lower levels. OMWBE maintains the BizNet system which is a listing of certified minority-owned and women-owned businesses that are willing and able to do business with the state. Access to BizNet is on the OMWBE website at: <http://www.omwbe.wa.gov/>.

No preferences may be included in the scoring of proposals for M/WBE participants and no minimum level of M/WBE participation may be required as a condition for receiving award. Proposals cannot be rejected or considered non-responsive for not including M/WBE participation.

For more information, contact OMWBE at (360) 753-9693.

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Training on personal service contracts

15.10.55.a

Training on personal service contracts is required for all state agency staff who execute or manage personal service contracts. Those employees must complete OFM personal service contract training or agency-approved training prior to executing or managing personal service contracts. OFM provides ongoing personal service contract training for state agency personnel responsible for executing or managing these contracts. The training covers topics from contract planning and procurement through effective and efficient contract management and contract completion.

Agencies may provide their own personal service contract training, if the course is approved in writing in advance by OFM. If agencies provide contract training, names of staff who have attended the training must be reported to OFM.

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15.10.55.b

State agencies shall require agency employees responsible for executing or managing personal service contracts to complete the applicable training course to the satisfaction of OFM prior to executing or managing these contracts. (Training is also required for those who execute or manage client service contracts, so those classes are also listed below.) Staff who execute contracts are those who sign contracts. Staff who manage contracts are those who have responsibility for the day-to-day activities of the personal service contract. These activities may include conducting the procurement, drafting and negotiating contracts, providing technical assistance to contractors, monitoring contractor activities, reviewing and approving invoices, etc.

Staff who only execute or manage personal service contracts of less than \$5,000 are not required to take the training, however, the training is recommended. Staff who make payments against contracts or log or track contracts, but who do not engage in other contract management activities, are not required to take the training.

Executive Management training is available to a more limited audience of agency directors and assistant directors (or the management equivalent) who execute but do not manage contracts.

The following table provides further information about required classes:

Contract Responsibility	OFM Training Class*
Manage personal service contracts	Introduction to Personal Service Contracts (1/2 day) or Personal Service Contract Overview (full-day)
Manage client service contracts	Introduction to Client Service Contracts (1/2 day) or Client Service Contract Overview (full-day)
Execute personal service contracts and client service contracts	Contracting for Mid-Level Managers (1/2 day); or the personal service or client service classes listed above
Execute personal service contracts and client service contracts for Agency Directors or Assistant Directors (or management equivalent) only	Executive Management Contract Training (1 hour) or the personal service or client service classes listed above
Manage both personal service and client service contracts	One of each class is required to manage each type of contract

* If an agency provides its own OFM approved contract training, then that training satisfies the requirements.

State agency staff may register for OFM training through OFM's website at:
<http://www.ofm.wa.gov/training.htm>.

All internal agency procedures for requesting training must be followed prior to registration with OFM.

Attendance at the half-day *client* service contracts training offered by OFM will not meet the training requirement for staff who manage or execute *personal* service contracts. Likewise, staff who only manage or execute *client* service contracts would not meet the training requirement by attending the *personal* service classes.

15.10.55.c Any request for an employee to be exempt from this training requirement must be submitted to OFM in writing. OFM must approve the exception request prior to the employee executing or managing contracts, with few exceptions.

The exemption is to be considered temporary. The employee granted the exemption must attend contract training as soon as feasible after receipt of the exemption from OFM. Multiple requests for exemption for an individual will not be approved. State agencies are responsible to ensure that staff attend training as soon as possible after receiving the exemption.

15.10.60

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Risk-based audits

OFM conducts risk-based audits of the contracting practices associated with individual personal service contracts to ensure agency compliance with the provisions of this Chapter. A risk-based audit means a review of the management and fiscal controls and contracting practices associated with personal service contracts.

OFM determines the number of audits to conduct and which agencies to include based on funding provided.

OFM forwards the results of the risk-based audits conducted to the Governor, the appropriate standing committees of the Legislature, and the Joint Legislative Audit and Review Committee.

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Audit and investigative findings

RCW 39.29.130 requires the State Auditor's Office (SAO) and the Attorney General's Office (ATG) to prepare an annual report of agency personal service contract audit and investigative findings and enforcement actions with a status of agency resolution. The SAO and ATG submit the report to OFM, the Governor and the Legislative policy and fiscal committees by November 30th of each year.

The audit findings referenced herein are those issued by the SAO and are not related to the risk-based audits conducted by OFM.

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Standards of ethics and conduct

Chapter 42.52 RCW, "Ethics in Public Service," applies to all state employees in all branches of state government. State employees contracting on behalf of the state are to maintain strict ethical standards and take caution to avoid any real or apparent conflict of interest situations. State employees must also be aware of requirements and restrictions regarding contracting with current or former state employees. State employees should familiarize themselves with this statute prior to entering into contracts.