

This policy is pending changes that may occur during the upcoming legislative session and does not reflect the agency changes resulting from ESSB 5931. However, the authority of these policies now lies under the newly created Department of Enterprise Services.



Chapter 15 - Personal Service Contracts

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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.

15.10.15

November 29, 2010

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.

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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.

Performance-based Contract – A written document detailing an agreement between parties and identifying expected deliverables, performance measures or outcomes with payment contingent on their successful delivery. Performance-based contracts also use appropriate techniques, which may include, but are not limited to, consequences and/or incentives to ensure that agreed upon value to the state is received.

Personal Service Contracts

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 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.

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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.

15.10.20

June 10, 2010

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.

State agencies are encouraged to award three percent (3%) of all personal service contracts that are exempt from competitive bidding requirements under chapter 39.29 RCW to veteran-owned businesses certified by the Department of Veterans Affairs.

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

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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).

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.

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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.

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

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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).

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.

15.10.25

July 1, 2007

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

August 24, 2011

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.

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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 State Auditor's Office 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.

15.10.30.c Unless specifically authorized by statute, agencies are *prohibited* from entering into personal service contracts with members of any agency board, commission, council, committee, or other similar group that is formed to advise the activities and management of state government where such contract is for services related to work done as a member of the agency board, commission, council, committee or other similar group.

15.10.35

July 1, 2007

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.

15.10.40

July 1, 2007

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;

Personal Service Contracts

- 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.

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.ga.wa.gov/competitivecontracting/>.

15.10.45

July 1, 2007

Expenditure coding for personal service contracts

Subsubjects 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 subsubjects are included in Subsection 75.70.20.

15.10.50 Office of Minority and Women’s Business Enterprises

July 1, 2007

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.

15.10.55 Training on personal service contracts

July 26, 2009

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
July 1, 2007

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.

15.10.65

July 1, 2007

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.

15.10.70

July 1, 2007

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.



15.20 Personal Service Contracts — Competitive Procurement Requirements

15.20.10

July 1, 2007

Purpose of this policy

This policy serves as the basis for conduct of competition in award of personal service contracts.

15.20.15

July 26, 2009

Competitive procurement requirements

Chapter 39.29 RCW requires that personal service contracts be competitively procured, with few exceptions. This statute reinforces the state of Washington's strong public policy favoring competition in the purchase of its goods and services. Competition is to be conducted with fairness and objectivity, giving attention to even the appearance of fairness, to ensure equal and open competition is achieved. Competition not only provides qualified firms equal opportunity to participate in state contracting, but also provides protection to the state in ensuring receipt of fair market pricing and quality services.

Competitive procurement of personal services involves evaluation of proposals based on multiple factors such as experience, qualifications, capacity, availability, cost, etc. Cost is always a factor but does not need to be the determinant factor. Agencies determine the weighted value of evaluation criteria and select a contractor and negotiate the contract based on these criteria. This is a different type of procurement process than opening sealed bids at a public bid opening and basing selection primarily on cost.

Subsection 15.10.20 identifies the categories of contracts that are **exempt** from the competitive procurement requirements. Subsection 15.20.50 lists **exceptions** to competitive procurement.

A documented, informal process called "evidence of competition" is required for personal service contracts of \$5,000 to \$19,999, and a documented, formal, competitive process called "competitive solicitation" is required for contracts of \$20,000 or greater. Both are discussed in more detail in the following subsections.

15.20.20

June 7, 2012

Evidence of competition – informal competition

Except as noted below for institutions of higher education, the informal procurement process known as “evidence of competition” shall be used for personal service contracts estimated to be \$5,000 or more but less than \$20,000. This process may be used to award one or more contracts, but each contract must be in an amount less than \$20,000.

For institutions of higher education, the informal procurement process known as “evidence of competition” shall be used for personal service contracts estimated to be \$10,000 or more but less than \$100,000. This process may be used to award one or more contracts, but each contract must be in an amount less than \$100,000. A record of competition for all such personal services contracts must be documented for audit purposes.

15.20.20.a

Written solicitation. The agency is to prepare and issue an informal, written solicitation document. The document may be in the form of a letter, an electronic memorandum or other format that clearly sets forth the required information in writing. It can be sent electronically, by facsimile, or by mail.

For contracts estimated to be \$10,000 or more but less than \$20,000, agencies are required to post the solicitation on the on-line contractor registration and bid system called Washington Electronic Business Solution (WEBS) operated by the Department of General Administration (GA). WEBS may be accessed at: <http://www.ga.wa.gov/webs/>. For assistance using WEBS, contact GA at (360) 902-7400.

At a minimum, the solicitation should include a description of the type of services required, the proposed project schedule, a request for the firm’s qualifications/experience, request for the costs or fees to be charged to perform the service, and the due date and location for written responses to be submitted. The informal competitive process is to be expeditious; however, agencies should provide enough time for firms to submit complete responses.

A sample Letter to Request Bids is provided on the Office of Financial Management’s (OFM) Additional Contracting Resources website at: <http://www.ofm.wa.gov/contracts/resources/default.asp>.

Exception: For informal competition, institutions of higher education may obtain quotations by telephone, electronically, in writing or any combination thereof. Use of WEBS is not required but is an option.

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- 15.20.20.b **Multiple firms.** The agency is to solicit responses from "multiple firms" in selecting a contractor. "Multiple" firms mean a reasonable number of parties considering such factors as type of services needed, cost, schedule, and availability. For informal competition, the offer is to be issued to a **minimum of three** firms. If fewer than three firms are contacted, an explanation is to be included in the contract file as to why more firms were not invited to participate.
- As part of securing the three vendor quotations, institutions of higher education must invite at least one quotation **each** from a certified minority and a certified woman-owned vendor that otherwise qualifies to perform the work.
- 15.20.20.c **Evaluation and negotiation.** The agency is to document the time and date when responses were received at the location specified in the solicitation to validate that they were within the due date and time. Evaluate written responses based on how well each proposal meets the requirements described in the informal solicitation document. One or more individuals should evaluate the written responses. Document in writing the basis for the award decision. Notify the successful and unsuccessful proposers of the results in writing. Conduct contract negotiations with the apparent successful contractor. When agreement is reached between the parties, execute a personal service contract and work may begin.
- 15.20.20.d **Documentation.** The agency must thoroughly document the process used to select the contractor and retain the appropriate auditable documents in the files, including at a minimum the following:
- Names of the firms contacted and/or solicited.
 - Copy of the solicitation document issued.
 - The WEBS System Identifier Number through which the bid detail can be displayed in WEBS.
 - Copies of the responses received.
 - Written documentation of the evaluation and selection process including the reason(s) for selection of the successful contractor.
 - Copies of the written notification sent to the successful and unsuccessful firms.
 - Copy of the executed contract.
- 15.20.20.e Report the contract to OFM in the Personal Service Contract Database, in accordance with the requirements of Subsection 15.30.55.

15.20.30 Formal competitive solicitation

June 7, 2012

15.20.30.a Except as noted below for institutions of higher education, the formal competitive solicitation for personal service contracts of \$20,000 or more is required, as described in the following subsections.

For institutions of higher education, the formal competitive solicitation for personal service contracts is \$100,000 or more.

15.20.30.b 1. **Use of GA WEBS system.** To notify qualified consultants of personal service solicitations, agencies must use the on-line contractor registration and bid notification system called Washington's Electronic Business Solution (WEBS) operated by the Department of General Administration (GA). WEBS was developed to centralize the location of bid information on multiple types of state purchases for the convenience and benefit of both state agencies and those firms, organizations and individuals that want to participate in state contracting. WEBS may be accessed at: <http://www.ga.wa.gov/webs/>. For assistance using WEBS, contact GA at (360) 902-7400. Agencies should encourage firms with which they conduct business to register in WEBS.

WEBS includes names of certified minority and women-owned businesses, and agencies are encouraged to include them in the notification process. Agencies may also contact the Office of Minority and Women's Business Enterprises' for assistance in locating certified firms and/or to use the BizNet System for names of additional firms to contact.

Exception: If services will be provided primarily outside of the United States, agencies are not required to use GA WEBS. In those instances, agencies may advertise the services through a published legal notice or use other methods or approaches they determine to be most appropriate, and/or culturally relevant, to notify interested parties in other countries of the need for services to be performed outside of the U.S.

2. **Notification to six or more firms.** Six or more firms must be contacted in writing about the solicitation. This notification requirement is satisfied when the solicitation document or notice of solicitation is posted in one or more commodity categories in WEBS.

Generally, the requirement to contact six or more firms can be satisfied through use of WEBS. However, agencies may also notify firms through other methods, in addition to WEBS. A minimum of six must be notified through these methods.

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In the unusual circumstance when fewer than six firms are either listed in WEBS or can be found through other methods, document in the file the efforts taken to locate more firms and the basis for the agency's conclusion that additional firms were not available.

3. **WEBS commodity code not available.** If WEBS does not have the category of personal service needed for a solicitation, the agency should notify GA to add the category. If the new category cannot be added to WEBS in a timely manner and the solicitation schedule will be jeopardized, the agency must:
 - a. Publish a legal notice of the solicitation in a newspaper that it determines to be the most advantageous for notification purposes;
 - b. Notify six or more firms outside of WEBS and document why this approach is being used; and
 - c. Release the solicitation document and proceed with the competitive process as outlined in this policy. Firms contacted outside of WEBS should be encouraged to register in WEBS as soon as the category is established by GA. This situation should happen on an exception basis.

4. **Advertising.** When agencies post a solicitation in WEBS, they are **not required** to also advertise the solicitation by publishing a legal notice in a newspaper, unless one of the below exceptions is met. Agencies have the option, to use other effective methods to notify firms of their solicitations in addition to the use of WEBS.

When any of the below exceptions apply, advertising by publishing a legal notice in a newspaper in Washington State **is required**:

- a. WEBS cannot be used by an agency because the system does not have the category of service needed and/or the category cannot be added in a timely fashion. Or, the category is included but no firms have registered. The agency must then advertise by publishing a legal notice of its solicitation in a newspaper in Washington State that it determines to be the most advantageous for its purposes.

- b. For executive cabinet agencies only, a contract is estimated to be in the amount of \$552,000 or more and is determined to meet the requirements set forth in international trade agreements. Refer to Subsection 15.20.35 for further information.

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- c. The agency determines that a sole source contract is appropriate. Refer to Subsection 15.20.60 for further information.

Published legal notices, when used, should clearly describe the proposed scope of work to enable potential bidders to make informed decisions about whether to request the solicitation document.

A sample legal notice is provided for reference on OFM's Additional Contracting Resources website at:

<http://www.ofm.wa.gov/contracts/resources/default.asp>.

15.20.30.c

Competitive solicitation document. A formal solicitation document for personal services valued at \$20,000 or more must be developed to describe the agency's need for services and/or the problem to be addressed. A well-written, well-considered solicitation document will help ensure responsive proposals and positive results. The document should provide clear, unambiguous statements in order for firms to understand what the agency needs, instructions for submitting proposals, and criteria for proposal evaluation. The two most commonly used documents for personal services are the Request for Proposals (RFP) and the Request for Qualifications and Quotations (RFQQ).

Note: For ease of reference, the term RFP will be used, as applicable or as otherwise noted, throughout this subsection to indicate a formal solicitation document.

The RFP is used when the agency has an identified need or problem and is seeking proposals from multiple firms that describe solutions or approaches to address the agency need or problem, qualifications and experience of the firm and costs or fees to provide the services.

An RFQQ is used when the agency has identified the need and the services to resolve it and is looking only for a firm's qualifications and costs or fees to provide the identified services.

The competitive solicitation document will vary based on the types of requirements related to the project, the complexity of the services, and the project budget. For example, a competitive solicitation document for a \$300,000 project typically includes more requirements than one for a \$30,000 project.

The competitive solicitation document may be amended if changes are necessary, and any amendments must be broadly distributed. In addition to posting solicitations on WEBS, any amendments to the solicitations must also be posted on WEBS.

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If the solicitation was posted on the agency's website, post the amendments there also. If the solicitation was provided to firms through other methods, they must also be advised of the amendments. This helps ensure interested firms are receiving the same and most current information.

A sample RFP and RFQQ are provided on OFM's Additional Contracting Resources website at:

<http://www.ofm.wa.gov/contracts/resources/default.asp>.

A Request for Qualifications (RFQ) is used when an agency is seeking to establish a pool of qualified firms for future contract work. A contract cannot be awarded based on a RFQ process because cost has not been evaluated only qualifications. A contract can only be awarded after another competitive process has been conducted from the pool of qualified firms that includes cost as an evaluation criterion. The resultant contract is then filed with OFM.

A Request for Information (RFI) is used when an agency is seeking additional information about services in the marketplace. An RFI is not a type of competitive process, and a contract cannot be awarded based upon issuance of an RFI or responses to an RFI.

- 15.20.30.d **Timeline for responses.** The amount of time between issuing the solicitation document and the due date/time for responses should be reasonable so that firms will have adequate time to prepare thorough and comprehensive responses. The time will vary depending on the complexity of the project.
- 15.20.30.e **RFP Coordinator role.** The individual named as the RFP Coordinator is to be the sole point of contact in the agency for the solicitation. All questions from prospective proposers regarding the procurement should be directed to the RFP Coordinator for response. Solicitations may include language stating that if other individuals are contacted regarding the solicitation, the firm may be disqualified from participating in the competitive process. Responses to questions are issued only by the RFP Coordinator and are considered an amendment to the solicitation document. The proposals are also submitted to the RFP Coordinator.

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15.20.30.f

Evaluation criteria. Competitive selection of a successful contractor is to be based on pre-established evaluation criteria identified in the solicitation document. Weighting of the criteria should be determined based on the importance of the factors to the successful completion of the contract. For example, experience may be weighted more highly than the ability to meet the project schedule. Only criteria related to content in the RFP may be used in the evaluation of proposals.

Evaluation criteria required, at a minimum, for either an RFP or an RFQQ are shown in the table below:

Mandatory Evaluation Criteria	RFP	RFQQ
Firm experience, ability and capacity	X	X
Staff qualifications and experience	X	X
Fees or costs	X	X
Responsiveness to schedule	X	X
Quality of previous performance and reputation	X	X
Compliance with statutes and rules related to contracts or services	X	X
Understanding of the project and proposed methodology	X	
Project management, internal controls and team structure (if multiple staff will be involved)	X	
Quality of proposed work plan and description of deliverables	X	

The table lists the minimum requirements for evaluation criteria. Many other criteria may be included that are applicable to the personal services needed.

Do not use vague or subjective evaluation criteria, or evaluation factors that are unnecessarily restrictive to otherwise qualified firms.

15.20.30.g

Evaluation team. An evaluation team should be assembled that includes individuals who collectively offer the overall knowledge and expertise to evaluate the proposals effectively and objectively. A minimum of **three** evaluators shall be used to ensure that applicable disciplinary skills, abilities, knowledge, and objectivity are represented. If fewer than three evaluators are used, the agency must document in writing why it did not use three. If, however, only one responsive proposal is received, fewer than three evaluators may be used, if the agency determines that is the appropriate course of action.

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For complex procurements, an agency may use separate evaluation teams for each section of the proposals, such as a technical team, management team and/or a cost team, with each evaluation team containing specific expertise applicable to its section of the proposal.

Evaluators must be unbiased and able to evaluate proposals effectively and objectively. Evaluators must also be able to maintain confidentiality during the evaluation process.

15.20.30.h

Pre-proposal conference. A pre-proposal conference is an optional step in the competitive solicitation process and is generally used for more complex procurements. The pre-proposal conference provides a setting where interested parties can ask questions and seek clarification and additional information about the RFP in a public setting. The agency also has the opportunity to provide clarification on complicated issues or requirements of the RFP.

Answers given at the pre-proposal conference by the agency are considered tentative. Questions submitted in writing or raised at the pre-proposal conference and final agency answers will be documented as an amendment to the RFP. Amendments are to be provided to all firms that were issued the RFP and attended the pre-proposal conference, if known, and posted on WEBS and/or on any website where the solicitation is posted.

Attendance at pre-proposal conferences is generally not mandatory, but can be and, if so, must be stated clearly in the RFP.

In situations where few questions are likely to arise as a result of the RFP, the pre-proposal conference is not necessary. Instead of a pre-proposal conference, questions can be submitted in writing to the RFP Coordinator. Answers will be provided to all firms that were issued the RFP, and posted on WEBS and/or on any website where the solicitation is posted.

15.20.30.i

Receipt of proposals. Proposals, whether electronic or hard copy, are required to be received by a definite time and date and to a specific location or e-mail address.

For hard copy submissions, immediately upon receipt by the agency at the location specified in the solicitation, the date and time of receipt should be noted on each proposal with the signature or initials of the individual who received the proposal. This verifies the proposal was received within the due date and time.

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For electronic submission of proposals, the e-mail date and time **received** are utilized (not the time **sent** by the proposer). For either type of submission, proposals should be secured.

Late proposals should not generally be accepted; however, limited exceptions do exist, as follows:

- The late proposal is the only proposal received;
- Late receipt was due solely to faulty handling of the proposal after receipt by the agency; or
- For electronic submittals, the agency's computer system is not-operational at or around the time proposals are due.

Agencies are not responsible for delays experienced by any delivery service. Agencies are also not responsible, when proposals are submitted electronically, for problems with the proposer's e-mail or systems, when the agency's systems are operational.

15.20.30.j

Responsiveness of proposals. The RFP Coordinator typically reviews the proposals for responsiveness prior to providing them to the evaluation team. For a proposal to be responsive, it must meet the minimum requirements of the RFP. Only responsive proposals are submitted to the evaluation team for consideration. If only one proposal is received, it too must be checked for responsiveness. If a proposal is non-responsive, it may be rejected. The reason(s) for rejection of a proposal for non-responsiveness must be included in the contract file and communicated to the proposer.

15.20.30.k

Written evaluation. The purpose of the evaluation process is to assess the proposals offered by the proposers based on the criteria in the RFP. The evaluation lends integrity to the competitive process and ensures all proposers of fair and equal treatment. Proposals are to be evaluated strictly against the evaluation criteria set forth in the RFP. Weighting of the evaluation criteria should also be included in the RFP.

An evaluation document with numerical scores must be used for evaluation of written proposals to ensure evaluators are consistent in the scoring approach and methodology among the proposals. Scores from the written proposals are used to determine ranking for oral interviews, if applicable, and/or for contract award. A variety of scoring methodologies is available but must be consistent with the RFP and objective, fair and unbiased.

If only one responsive proposal is received, the agency may conduct a more abbreviated evaluation process, e.g., using fewer evaluators or only one, as long as the agency can verify that the modified process resulted in a fair and objective award decision.

Approaches for scoring include:

- The final score for each proposal is determined by adding together the points awarded by each individual evaluator;
- The points awarded by each evaluator for each scored section are totaled and averaged among the evaluation team. The final score for each proposal is determined by adding the average score for each scored section;
- The evaluation team may discuss the proposals as a group and determine a consensus or team score for each section of each proposal; or
- Other similar objective approaches.

15.20.30.l

Oral interviews. To make a final selection from among a field of highly qualified, top- scoring finalists, it may be appropriate to invite the top-scoring firms for oral presentations. If oral interviews are conducted, each interview should be conducted in the same format. Oral presentations may be structured to allow a specified time limit for proposer presentations and for questions from the evaluation panel.

The oral interview may determine the apparent successful contractor or the scores from the oral presentation and the written proposal may be combined to determine the apparent successful contractor. The scoring approach identified in the RFP must be used.

15.20.30.m

Determining the apparent successful contractor and unsuccessful firms. Based on the evaluation team's recommendation for award, an apparent successful contractor is selected. Notify the firm in writing.

Also, notify unsuccessful firms in writing. Notification should be done promptly as this starts the time for scheduling the debriefing conferences and the protest period. The debriefing and protest processes must be followed in accordance with the terms and schedules outlined in the RFP.

Contract negotiations are then conducted with the apparent successful contractor to more precisely define the terms of the contract. If successful, the contract will be finalized and signed by all parties. If negotiations are unsuccessful with the apparent successful contractor, the second highest-rated firm may be invited to participate in contract negotiations. If those are unsuccessful (a rare occurrence for personal services), the third highest-rated firm may be invited.

15.20.30.n

Documentation. The evaluation and selection process is to be thoroughly documented in order to substantiate that all proposers were treated equally and fairly and that an equitable and impartial competitive process was conducted. Required documentation, at a minimum, is as follows:

- The WEBS System Identifier Number through which the bid detail can be displayed in WEBS. Also, if used, a copy of any legal notice published.
- Copy of the solicitation document and any amendments.
- Names of firms notified about the solicitation.
- Copies of all proposals submitted. If submitted electronically, a disk with the proposals can be retained.
- Score sheets used for determining ranking of proposals. This may include individual evaluator's score sheets, a summary score sheet showing evaluator's final totals, or a team score sheet with one set of scores determined by the team. If oral interviews are conducted and score sheets are used, retain those. If score sheets were not used for the oral interview, documentation of the basis for selection of the successful bidder should be retained.
- Copy of written notification to successful and unsuccessful proposers.

Other types of optional documentation may include:

- Conflict of Interest and Nondisclosure Form signed by each evaluator.
- Pre-award Risk Assessment form.

Required documentation and any optional types of documentation must be retained in accordance with records retention schedules.

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15.20.30.o **Debriefing conferences.** Unsuccessful proposers must be provided the opportunity to participate in a debriefing conference within the time limits included in the solicitation document. The solicitation document should clearly specify the terms and schedule for the debriefings. The debriefing conference is generally required before a protest may be submitted.

Debriefing discussions should be limited to a critique of the requesting firm's proposal. This feedback can assist the firm in developing and submitting future proposals that may be more effective. Agency representatives should be able to explain the scoring of the proposal in order to assure the unsuccessful firm that its proposal received a fair and objective evaluation.

Debriefings may be conducted in person or by telephone and may be limited to a specific period of time.

15.20.30.p **Protest of the procurement.** In the event an unsuccessful proposer protests a procurement, the agency must carefully follow the protest process and timelines outlined in the solicitation document. Typically, solicitation documents require that unsuccessful proposers must participate in a debriefing conference before being allowed to submit a protest. Protests must generally be submitted based on an issue of fact concerning the following, or other criteria that may be stated in the solicitation document:

- A matter of bias, discrimination, or conflict of interest on the part of an evaluator;
- Errors in computing the scores; or
- Non-compliance with procedures described in the procurement document or agency policy.

Protests that are not based on procedural matters are not considered. When a protest is filed with an agency, work under the contract may not proceed until the protest process is concluded. The protest must be reviewed and evaluated by a qualified individual(s) who was not involved in the procurement process. For personal service procurements related to information technology, the Department of Information Services will consider protests that have been responded to by an agency and then appealed by the vendor.

Also, if a contract has been filed with OFM and the agency subsequently receives a protest, the agency must notify OFM immediately of the protest. OFM will hold the contract filing without processing until the protest review has concluded. The agency must notify OFM of the outcome of the protest review. If the protest is determined to be without merit, OFM will then finalize its contract review. If the protest is upheld, OFM will return the filing.

15.20.30.q **Public disclosure of proposals.** Proposals are considered public records as defined in chapter 42.56 RCW. In the event a firm desires to claim portions of its proposal proprietary and exempt from public disclosure, it must clearly identify those portions. Each page of the proposal claimed to be exempt must be clearly identified as “proprietary information.” If a public records request is made for the information that the consultant has marked as “proprietary information,” the firm may seek to obtain a court order from a court of competent jurisdiction enjoining disclosure pursuant to chapter 42.56 RCW, or other state or federal law that provides for nondisclosure. The successful contractor’s proposal generally becomes part of the contract that is subject to public disclosure.

15.20.30.r **Canceling solicitations.** Agencies shall make every effort to include realistic, achievable requirements in personal service solicitation documents and to anticipate any changes in the requirements. If the decision is made to cancel the solicitation, reasonable notice is to be provided to all prospective proposers.

Agencies may cancel a solicitation and reject all proposals after evaluation if there is a compelling reason including, but not limited to, the following:

- Requirements in the solicitation were ambiguous, inadequate or unclear;
- Services being solicited are no longer required;
- Funding is no longer available;
- Agency or program authority is withdrawn;
- The solicitation did not provide for consideration of all factors of cost to the agency;
- All proposals were at unreasonable prices; or
- No responsive proposal is received from a responsible bidder.

15.20.35
January 1, 2012

Requirements of international trade agreements – executive cabinet agencies only

15.20.35.a

The state of Washington adheres to several international government procurement agreements, including the World Trade Organization (WTO) Government Procurement Agreement (GPA) which was entered into as a means of establishing international procedures relating to procurement and to provide expansion of world trade. The terms of these agreements apply **only to executive cabinet agencies**.

Affected agencies must ensure they will provide the same treatment to foreign contractors of the signatory nations as to U.S. contractors and that no requirements in their solicitations will preclude competition from foreign contractors in countries that participate in the agreements.

Executive cabinet agencies that make purchases of goods and services in the amount of the current WTO threshold of \$552,000 or more (inclusive of all costs and fees, expenses, taxes, etc.) must adhere to the GPA for their competitive purchases, with certain exemptions. This threshold is adjusted every two years.

15.20.35.b

WTO exemptions. The following goods and services are exempt from the requirements of the WTO GPA:

- Fuel (Washington State specific exemption);
- Paper products (Washington State specific exemption);
- Boats, ships, vessels (Washington State specific exemption);
- Transportation services and restrictions attached to federal funds for mass transit and highway projects;
- Dredging;
- Public utility services, including telecommunications and ADP-related telecommunications services except enhanced telecommunications services;
- Printing services;
- Research and development;
- Services in support of military forces located overseas;

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- Management and operation contracts of certain government or privately-owned facilities used for government purposes, including federally-funded research and development centers;
- Goods and services in support of national security;
- Goods and services in support of general environmental quality;
- Contracts for development of distressed areas;
- Emergency purchases;
- Sole source purchases and other exemptions listed in RCW 39.29.040;
- Contract/purchases from community rehabilitation programs or Correctional Industries;
- Works of art or for reasons connected with protection of exclusive rights, such as patents or copyrights;
- Contracts with philanthropic organizations;
- Intellectual property;
- Minority-owned and women-owned businesses and businesses owned by disabled veterans and small business set asides;
- Products or services of handicapped persons;
- Acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt;
- National security;
- Public morals and order or safety;
- Human, animal or plant life;
- Philanthropic institutions;
- Development of distressed areas;
- General environmental quality of the State;

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- Non-contractual agreements of any form of government assistance not specifically covered, including grants, loans, cooperative agreements, etc.;
- Contract/purchases conducted by the State on behalf of local government agencies;
- Procurement made by a covered entity on behalf of non-covered entities at a different level of government;
- Additional goods or services by the original supplier that are intended either as replacement parts for existing supplies or installations, or as the extension of existing supplies, services or installations where a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services;
- Prototypes or a first product or service which are developed in the course of, and for, a particular contract for research, experiment, study or original development; and
- Services below the \$552,000 threshold.
- If personal services are needed that are estimated to meet or exceed the WTO threshold of \$552,000 and are not otherwise exempt in the foregoing list, they are subject to the GPA.

15.20.35.c

WTO competition - executive cabinet agencies. Requirements related to WTO competition are as follows:

1. Invite participation by member nations in bid solicitations by either publishing a legal notice or a Notice of Planned Procurement about the upcoming solicitation in a newspaper. Where feasible, allow a minimum of 40 calendar days from the date of publication of the legal notice or notice of planned procurement to the date of issuance of the solicitation document.

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The legal notice/notice of planned procurement for personal services is to include the following information, as applicable:

- Estimated start and end dates of the proposed contract, including any options to extend;
- The nature and quantity of the services;
- Whether negotiations will be used to award the contract;
- Due date, if any, for notifying agency of entity's interest in receiving the solicitation, and estimated issuance date of solicitation;
- Language in which the proposal must be submitted;
- Indication that the solicitation is subject to the WTO GPA;
- How/where the solicitation document can be accessed. Name and address of awarding agency and contact information; and
- Maximum dollar amount of contract services, if available.

Solicitation documents (e.g. Request for Proposals, Request for Qualifications and Quotations, etc.) subject to WTO GPA requirements, are to include the following elements at a minimum. Those items in bold are additional to other state personal service contracting standards:

- Complete description of need and/or services required;
- Whether the contract will involve negotiation;
- Proposed start and end dates of the contract, including options to extend;
- Minimum qualifications;
- Description of specific economic or technical requirements, financial guarantees and related information being requested for submission;

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- Agency's address where proposal should be sent and the specific location for courier delivery, if allowed, or a statement explaining that hand delivery is not accepted. Include where and to whom requests for information should be forwarded including email and telephone numbers with area codes;
 - Format for submission of proposals and whether they must be submitted by mail, by courier or if e-mail is acceptable. **State if the proposal must be written in English;**
 - Due date and time for receipt of proposals, **including time zone;**
 - Length of time the proposal should be open for acceptance;
 - Explanation that amendments to the solicitation document will be made available to all who receive the solicitation; and
 - Evaluation criteria for awarding the contract. Include cost elements to be included in the evaluation of pricing, such as insurance, taxes and **form of currency to be used for payment.**
2. Notify successful and unsuccessful firms about the award status as soon as the evaluation process is completed and an award decision is made.
 3. Handle protests with fairness and equity to all parties in accordance with the solicitation document and WTO guidelines.

A "Notice of Award" of contracts that were subject to the WTO GPA requirements is to be published no later than seventy-two (72) days after the award of the contract.

15.20.40

March 1, 2010

Master personal service contracts and convenience personal service contracts

15.20.40.a

Master contracts. The term “master” personal service contracts, as used in this policy, refers to personal service contracts competitively solicited according to Subsection 15.20.30 and awarded by the Department of General Administration, the Department of Personnel, the Department of Information Services, and the Department of Printing for use by other state agencies. To access the services from the contractors available under the master contracts, the agency conducts a second-tier competition for the specific scope of services needed. The second-tier contracts are not filed with OFM, as the master personal service contracts were filed at time of award. Agencies are encouraged to use master contracts as a way to improve procurement efficiency, maintain quality and reduce costs.

15.20.40.b

Department of General Administration (GA). The GA Office of State Procurement (OSP) awards certain categories of personal services as identified by GA and its customers as areas of need. GA conducts the competition in accordance with Subsection 15.20.30, awards the master personal service contracts, and files them with OFM. To procure personal services under the master contracts, a second-tier competition is conducted. GA will notify vendors of the second-tier work request on behalf of the requesting agency unless otherwise agreed upon.

Agencies are responsible to maintain adequate documentation of the second-tier competitive process when using GA’s master personal service contracts to substantiate that all bidders were treated equally and fairly and that an equitable and impartial competition was conducted.

Upon selection of the successful firm, the agency awards a Work Order contract to the contractor and provides a fully executed copy to GA.

GA reports the services provided under the master personal service contracts to OFM on a quarterly basis.

More information on these contracts is available on the GA website at:

<http://www.ga.wa.gov/purchase/contracts.htm>.

15.20.40.c

Department of Information Services (DIS). For information technology (IT) personal services, DIS conducts the competition in accordance with Subsection 15.20.30, awards the master personal service contracts, and files them with OFM. To procure IT personal services under the master contracts, a second-tier competition is conducted, unless in unusual circumstances sole source can be substantiated under the ISB IT Investment Standards and the OFM sole source requirements.

Personal Service Contracts

Agencies are responsible to maintain adequate documentation of the second-tier competitive process when using DIS' master personal service contracts to substantiate that all bidders were treated equally and fairly and that an equitable and impartial competition was conducted.

Upon selection of the successful firm, the agency awards a Work Order contract to the contractor and provides a Purchaser Activity Report to DIS.

DIS reports the services provided under the master personal service contracts to OFM on a quarterly basis.

For more information, refer to the DIS TechMall website at:
<http://techmall.dis.wa.gov/services/ITPS.aspx>.

15.20.40.d

Department of Personnel (DOP). Agencies may also acquire personal services from DOP's master personal service contracts for employee training, including some IT software training. DOP conducts the competitive process in accordance with Subsection 15.20.30, awards master contracts, and files them with OFM. To procure personal services under the master contracts, a second-tier competition is conducted, unless in unusual circumstances sole source can be substantiated under OFM sole source requirements.

Agencies are responsible to maintain adequate documentation of the second-tier competitive process when using DOP's master personal service contracts to substantiate that all bidders were treated equally and fairly and that an equitable and impartial competition was conducted.

Upon selection of the successful firm, the agency awards a Work Order contract to the contractor and later provides a report of activity to DOP.

DOP reports the services provided under the master personal service contracts to OFM on a quarterly basis.

15.20.40.e

Department of Printing (PRT). The Department of Printing has limited master personal service contracts for print assessment services which can be used by all state agencies.

15.20.40.f

Second-tier competitive process under master personal service contracts. The second-tier competitive process conducted under the master personal service contracts must comply with the minimum standards noted below.

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Personal Service Contracts

Agencies are responsible to conduct the second-tier competitive process unless other arrangements are made with the agency holding the master contract.

Contract amount \$5,000 to \$19,999:

- Draft written solicitation using format prescribed by agency holding master contract. Solicitation must describe, at a minimum, the scope of work, the proposed schedule for services, request for firm's qualifications/ experience, commitment to meeting schedule, cost or fees to provide the services, evaluation criteria, and due date/time and address for written responses.
- Issue request to a minimum of three firms under the category of services needed. Notification of more firms is preferable. Document why, if fewer than three firms are issued the solicitation.
- Conduct evaluation of responses (one or more individuals may be involved).
- Notify successful and unsuccessful proposers of the award decision in writing.
- Document rationale for award decision.

Contract amount \$20,000 or more:

- Draft written solicitation using format prescribed by agency holding master contract. Solicitation must describe the scope of work, the proposed schedule for services, request for firm's qualifications/ experience, commitment to meeting schedule, cost or fees to provide the services, evaluation criteria, and due date/time and address for written responses.
- Issue request to a minimum of six firms under the category of services needed. More is preferable. Document why, if fewer than six firms are issued the solicitation.
- Conduct evaluation of responses with a minimum of three individuals.
- Notify successful and unsuccessful proposers of the award decision in writing (in addition to the notice generated in GA WEBS).
- Document rationale for award decision.
- Conduct debriefing conferences, if requested.

Personal Service Contracts

15.20.40.g **Convenience contracts.** Convenience or “on call” personal service contracts, for the purposes of this policy, are those that agencies competitively award for their own agency use. Typically, convenience contracts are awarded to multiple firms to provide the agency quick access to personal services on an as-needed or on-call basis.

Agencies must first conduct the solicitation in accordance with Subsection 15.20.30. The solicitation document must identify the method by which services will be awarded under the convenience contracts so that work is distributed fairly and equitably among the contractors.

Methods that can be used include rotating through the contractors as services are needed, sending a scope of work to those on the list in a particular category of service and evaluating and selecting the best response, selecting based on specialized expertise if only one firm is qualified and available, or selecting based on geographical area.

Agencies may issue task orders or similar documents under the convenience contracts to authorize specific services for an agreed dollar amount and period of performance.

Agencies must file the convenience contracts with OFM, but the task orders issued that authorize work under the convenience contracts need not be filed.

Amendments to the convenience contracts that add dollars or extend the end date must be filed with OFM.

15.20.50

June 10, 2010

Exceptions to the competitive procurement requirements

State agencies are encouraged to award three percent (3%) of all personal service contracts that are exempt from competitive bidding requirements under chapter 39.29 RCW to veteran-owned businesses certified by the Department of Veterans Affairs.

The following types of personal service contracts are exceptions to the competitive procurement requirements referenced in Subsections 15.20.15, 15.20.20, and 15.20.30:

- Sole source contracts;
- Emergency contracts;
- Contract amendments;
- Contracts exempt under RCW 39.29.040. Refer to Subsection 15.10.20; and
- **OFM director exemptions.** Contracts exempt by the director of OFM, when it has been determined that a competitive procurement process is either not appropriate or not cost-effective. This exemption is intended for exceptional or unusual circumstances that may preclude the use of the standard competitive and filing processes. An agency must submit a request to the OFM director in advance of the proposed contract start date. At a minimum, the request should include:
 - A description of the type of service for which the exemption is requested;
 - An explanation as to why the agency considers the exemption appropriate;
 - Reason(s) why competitive procurement is not appropriate or cost-effective; and
 - An explanation of the effect or impact of not having the exemption.

OFM will provide the agency with a timely written response. In the event OFM exempts a particular service or category of contracts from competitive procurement, other affected agencies will also be notified.

15.20.60

July 26, 2009

Posting and advertising sole source contracts

RCW 39.29.018 requires that sole source personal service contracts in the amount of \$5,000 or more be posted in GA WEBS prior to award. Sole source personal service contracts of \$20,000 or more **must also** be advertised for a minimum of one day in either a statewide or regional newspaper in Washington State. Additional advertisement in other media may also be conducted. These steps publicly announce the potential sole source contract and help establish that no other firms are available to provide the service.

These requirements are based on the individual sole source contract amount of \$5,000 or more, not the cumulative total of sole source contracts with a contractor in a fiscal year. Advertising is required regardless of the source of funds of the contract.

15.20.60.a

Sole source posting and advertisement. The sole source posting and advertisement shall include at a minimum:

- The name of the agency;
- A description of the services contemplated for sole source award;
- The proposed period of performance for the services;
- Information on how an interested party may contact the agency; and
- The deadline for an interested party to make such contact.

The name of the proposed contractor may also be included, but is not required. The contractor proposed for sole source award does not need to respond to the posting or advertisement.

A sample sole source advertisement is provided on OFM's Additional Contracting Resources website at:

<http://www.ofm.wa.gov/contracts/resources/default.asp>.

15.20.60.b

Response to sole source posting and advertisement. If a formal response to the sole source posting or advertisement is received from a firm, other than the proposed contractor, and the agency determines the firm is also qualified to provide the service, competitive procurement, as set forth either in Subsections 15.20.20 or 15.20.30, shall be conducted.

If an agency can demonstrate that the proposed contractor is the only qualified and available firm to provide the service, even though another firm responded to the sole source posting or advertisement, the contract may be filed with OFM as a sole source with a complete explanation as to how this conclusion was reached.

15.20.60.c

Exemptions to sole source posting and advertisement requirements.

Exemptions from the requirements for posting and advertising sole source personal service contracts include:

- Contracts for services where selection of the contractor is based on an exceptional personal accomplishment or characteristic, such as a national expert on a specialized topic or issue, authors of acclaimed books or articles, guest speakers, performers, and artists. This does not apply, however, to contracts for services such as training, facilitation, etc.
- Contracts for services where the funding source mandates with whom the agency shall contract and, therefore, the agency does not have discretion in making the award decision. Examples include requirements set forth in statute (RCWs), budget provisos, federal grant awards, etc.
- Contracts for services that will be provided entirely outside of Washington State, including services provided outside of the United States.
- Contracts that OFM determines are inappropriate for advertising based upon written request from the agency, which request can be submitted as part of filing the contract.
- Sole source contracts under \$5,000.



15.30 Personal Service Contracts — Filing, Record Keeping, and Reporting

15.30.10

July 1, 2007

Purpose of this policy

This policy serves as the basis for filing, record keeping, and reporting of personal service contracts.

15.30.15

July 26, 2009

Personal service contract filing requirements

15.30.15.a

Filing categories. Many, but not all, personal service contracts and amendments are subject to filing with OFM. Refer to Subsection 15.30.75 for tables that display filing requirements for state agencies and for institutions of higher education. Subsections 15.30.25 through 15.30.40 explain the specific filing requirements for each type of contract filing category.

The term “agency” is used in Section 15.30 to include all units and divisions within an agency as well as institutions of higher education, except where the term “institutions of higher education” is specifically referenced related to requirements.

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Personal Service Contracts

15.30.15.b **Filing periods.** Three different filing periods apply to the various contracts and amendments subject to filing. These timeframes should be known in advance and included in the contract project schedule. The filing period for contracts varies by filing category, as shown in the tables below:

STATE AGENCIES (exclusive of Institutions of Higher Education)	
Filing Period	Filing Category
Contract is filed with OFM no later than the start date of services.	<ul style="list-style-type: none"> • Competitively solicited contracts of \$20,000 or more, and their amendments, for services that do not fit the six categories listed in the first bullet in the box below. Also, amendments to these contracts that do not exceed 50% of the original contract amount or do not substantially change the scope of work.
Contract is filed with OFM a minimum of ten working days prior to the proposed start date of services.	<ul style="list-style-type: none"> • Competitive contracts of \$20,000 or more, and their amendments, for the following categories: <ul style="list-style-type: none"> o Management Services (CA), o Organizational Services (CA), o Marketing Services (CG), o Communication Services(CH), o Employee Training Services (CJ), and o Recruiting Services (CK). • Amendments to sole source or competitive contracts that result in the contract being greater than 50% of the original contract value, when those contracts, as amended, are in the amount of \$5,000 or more. • Amendments to sole source or competitive contracts that constitute a substantial change in the scope of work, when those contracts, as amended, are in the amount of \$5,000 or more. • All sole source contracts of \$5,000 or more and their amendments.
Contract is filed with OFM within three working days of start of services or contract execution, whichever is sooner.	<ul style="list-style-type: none"> • Emergency contracts of \$5,000 or more and their amendments. • Amendments awarded solely for the purpose of decreasing the total dollar amount of the contract.

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INSTITUTIONS OF HIGHER EDUCATION ONLY	
Filing Period	Filing Category
Contract is filed with OFM no later than the start date of services.	<ul style="list-style-type: none"> • Competitively solicited contracts of \$20,000 or more, and their amendments, and the contract includes \$20,000 or more in state funds, for services that do not fit the six categories listed in the first bullet in the box below. Also, amendments to these contracts that do not exceed 50% of the original contract amount or do not substantially change the scope of work.
Contract is filed with OFM a minimum of ten working days prior to the proposed start date of services.	<ul style="list-style-type: none"> • Competitive contracts of \$20,000 or more, and their amendments, and the contract includes \$20,000 or more in state funds, for the following categories: <ul style="list-style-type: none"> o Management Services (CA), o Organizational Services (CA), o Marketing Services (CG), o Communication Services(CH), o Employee Training Services (CJ), and o Recruiting Services (CK), • Amendments to sole source or competitive contracts that result in the contract being greater than 50% of the original contract value, when those contracts, as amended, are in the amount of \$5,000 or more. For sole source contracts, \$5,000 or more in state funds must be included. For competitive contracts, \$20,000 or more in state funds must be included. • Amendments to sole source or competitive contracts that constitute a substantial change in the scope of work, when those contracts, as amended, are in the amount of \$5,000 or more. For sole source contracts, \$5,000 or more in state funds must be included. For competitive contracts, \$20,000 or more in state funds must be included. • All sole source contracts of \$5,000 or more, and their amendments, when the contract includes \$5,000 or more in state funds.
Contract is filed with OFM within three working days of start of services or contract execution, whichever is sooner.	<ul style="list-style-type: none"> • Emergency contracts of \$5,000 or more, and their amendments, when the contract includes \$5,000 or more in state funds. • Amendments awarded solely for the purpose of decreasing the total dollar amount of the contract, if the contract was subject to filing with OFM.

Personal Service Contracts

15.30.15.c **Working days.** Working days for filing purposes excludes Saturdays, Sundays, and state legal holidays. For contracts subject to the ten-working day filing period, the earliest start date is the tenth working day after, but not including, the date of filing. The start date for those services may also be any date after the tenth working day, but not before, subject to OFM review or approval. The contract start date can fall on a weekend or holiday after the tenth working day, if desired. This filing period provides time for OFM processing, but also provides a public review period.

15.30.15.d **Start date.** To minimize confusion about the start date of contracts and amendments subject to the ten-working day filing requirement, the contract should include the following or a similar provision:

"Under the provisions of chapter 39.29 RCW, this personal services contract/amendment is required to be filed with the Office of Financial Management (OFM). No contract required to be filed is effective and no work shall commence or payment be made until ten (10) working days following the date of filing, and, if required, until approved by OFM. In the event OFM fails to approve the contract, the contract shall be null and void."

If the above language is not included in the contract, then the contract start date must reflect the correct start date based on the date of filing, or any date thereafter.

If OFM review is completed prior to the end of the ten-working day filing period, the start date remains the tenth working day after the filing date.

OFM may adjust the start date beyond the ten working days from initial contract filing, if the filing is incomplete when first submitted and the agency does not respond to OFM's request for additional information in a timely manner. If the agency provides additional information requested by OFM, prior to the end of the ten-working days, an adjustment will not be necessary.

However, it is the agency's responsibility to verify that the OFM review has been completed or approval granted prior to starting work. The Personal Service Contract Database provides email notification to agency contacts listed on the filing when OFM completes its review and/or approval.

Personal Service Contracts

15.30.15.e

Contract amendments. Generally, if a contract is subject to filing with OFM, amendments to the contract are also subject to filing.

1. Amendments that are **required** to be filed include those that:

- Increase the maximum contract cost.
- Decrease the maximum contract cost. (Decrease amendments are to be filed with OFM, if the contract total is \$5,000 or more after the decrease. These amendments must be filed within three working days following the date of amendment execution or start of services, whichever occurs first. Decrease amendments are designated as review filings.)
- Revise the scope of work.
- Revise the period of performance. (Refer to the second bullet under item #2 below presenting amendments that are not required to be filed with OFM.)
- Assign rights and liabilities under the contract to a new legal entity.

2. Amendments that are **not required** to be filed with OFM include:

- Amendments that result in administrative changes to the contract such as address changes, budget line item adjustments or hourly rate changes that do not revise the total contract cost, staff name changes, changes to deliverable due dates within the period of performance, and similar minor revisions.
- Amendments awarded at the end of the contract term, solely for the purpose of extending the contract period for up to and including two months. This can be either one two-month time extension or two one-month extensions. This provision applies only for the noted two months at the end of the contract period. The two-month time extension amendment may only be executed once without filing with OFM. It may not be used to authorize multiple, short-term, time-only extensions beyond two months. Once this exception has been used, any amendments executed to extend time for any length and/or add dollars after this two-month time extension require filing with OFM.

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Personal Service Contracts

3. Some contract amendments are subject to review by OFM and others are subject to OFM approval. Generally, if the contract is subject to review, its amendment is also subject to review, and if a contract is subject to approval, its amendment is subject to approval. Two examples illustrating exceptions follow:

Example 1 - A competitive contract for technical research services in the amount of \$20,000 is subject to OFM review. If the contract is amended by \$12,000, the amendment is subject to approval. The amendment exceeds 50 percent of the original contract amount and requires approval by OFM and is subject to the ten working day filing period.

Note: This example would not apply to institutions of higher education because they file only competitive contracts that include \$20,000 or more in state funds.

Example 2 - A contract is competitively awarded for \$10,000 and is not required to be filed. The contract is amended by \$4,500. The \$4,500 amendment is not subject to filing because the competitive contract is less than \$20,000 and the revised contract amount does not exceed 50 percent of the original contract amount. The contract is amended a second time for \$1,500. The \$1,500 amendment is subject to filing and OFM approval, because the \$1,500 combined with the previous amendment of \$4,500 results in total amendments of \$6,000, which exceeds 50 percent of the original contract amount.

15.30.15.f

Contract total amount. For filing purposes, the dollar amount specified in the contract should be the maximum contract value. That means the maximum amount that could be authorized for payment under the contract to the contractor and includes the amount estimated for sales and use taxes, travel and other expenses, etc.

If an agency pays directly for contractor airfare, lodging or other expenses, those amounts are not included in the contract total.

Personal Service Contracts

15.30.15.g

Contracts awarded by institutions of higher education. Institutions of higher education file only personal service contracts or amendments that are "state funded" in whole or in part, and meet applicable filing dollar thresholds.

- **Sole Source** – File these contracts and their amendments when at least \$5,000 or more in state funds are included.
- **Competitive** – File these contracts and their amendments when at least \$20,000 or more in state funds are included.

The term, "state funded," as referenced herein, shall mean dollars that are appropriated by the state Legislature and/or allotted by the institution. Again, this term applies to personal service contract filing requirements for institutions of higher education only.

If a contract or amendment awarded by an institution of higher education is funded by both state and non-state funds, e.g., donated funds, it is subject to filing only if the state funded portion equals or exceeds \$5,000 for a sole source contract or \$20,000 for a competitive contract.

Sole source contracts of less than \$5,000 are not subject to filing based on a cumulative count of sole source contracts with a contractor in a state fiscal year, as they are with state agencies. For institutions of higher education, each sole source contract itself must include \$5,000 or more in state funds to be subject to filing. Filed sole source contracts of \$5,000 or more are subject to the cumulative total, however, when determining if the value of the sole source contracts with a single contractor in a fiscal year equal or exceed \$20,000, and thus require OFM approval. The contract or amendment that results in the \$20,000 or more cumulative count is then subject to filing and OFM approval, even if its individual value is less than \$20,000.

The contracts that are not subject to filing with OFM, as explained in this Subsection, are reported to OFM. Refer to Subsection 15.30.55 for more detailed information.

Note: The "state funded" distinction described above applies only to filing requirements. The competitive procurement and other requirements of chapter 39.29 RCW apply to institutions of higher education regardless of fund source.

15.30.20 Filing personal service contracts and amendments

July 1, 2007

15.30.20.a

Personal Service Contract Database. Since June 1, 2003, personal service contracts and amendments are required to be filed *exclusively* through the Personal Service Contract Filing Database (PSCD). The PSCD automates many of the tasks associated with filing personal service contracts and amendments and:

- Streamlines the filing and reporting process for state agencies;
- Assists staff by directing them through the filing process with filing rules dynamically built into the system. The system determines the specific justification information that is required by OFM based on the information provided regarding the contract or amendment being filed;
- Provides agencies online access to view the status of their in-process filings; and
- Provides agencies online access to all filed and reported personal service contract data.

The PSCD is available to authorized state agency users **via** the statewide intranet at: <http://contracts.ofm.wa.gov/PSCD>.

PSCD is available to authorized state agency users **outside** the statewide intranet at: <https://fortress.wa.gov/ofm/contracts/PSCD>.

If a state employee needs access to the PSCD, contact the PSCD agency administrator designated by your agency. If you do not know who your agency administrator is, contact OFM at the PSCD customer service phone number: (360) 725-5262 or send an email to: ofm.contracting@ofm.wa.gov.

15.30.20.b

Contract or amendment. A copy of the contract or amendment, and all referenced attachments or exhibits, must be attached via the PSCD or sent to OFM as a hard copy or CD, etc. For the purpose of filing electronically, the contract or amendment submitted need not show signatures of the parties.

However, the document, when filed, must represent a true and final version of the agreement between the parties. Concurrent with the filing process, agencies can acquire the contractor's signature on the contract or amendment.

Personal Service Contracts

15.30.20.c **Justification.** Personal service contract filings must include a comprehensive explanation of the contract purpose, background and procurement approach. The filing justification submitted by the agencies must be able to withstand public, legislative, and executive scrutiny. Each justification field should be answered thoroughly and completely so that the filing is well documented and explained. Agencies should not refer to attachments, but rather provide specific answers in the justification fields.

Based on the data entered into PSCD about the contract or amendment, the database will display only the justification fields applicable to the filing.

15.30.20.d **Filing tables.** Refer to Subsection 15.30.75 for tables that display filing requirements for state agencies and for institutions of higher education.

15.30.25

July 26, 2009

Sole source contract filing requirements

Sole source contracts and their amendments are those that have not been competitively procured. Given the number of firms in the marketplace, absence of competition is not typical for personal services. Agencies should carefully consider both public and private sector resources before making a decision to pursue the exception of sole source award. Sole source contracts are improper if only for the administrative convenience of the agency.

When the agency determines that a competitive process is clearly not feasible and that the sole source criteria apply, it may proceed with a sole source contract, subject to OFM review and approval.

15.30.25.a **Sole source filings.** Sole source contracts in the amount of \$5,000 or more and their amendments must be filed with OFM. Institutions of higher education have the exception of filing only sole source contracts and their amendments that include \$5,000 or more in state funds. Refer to Subsection 15.30.15.g.

Sole source contracts of \$5,000 or more must be posted on GA WEBS. Sole source contracts of \$20,000 or more must be posted on GA WEBS and advertised in a statewide or regional newspaper in Washington State.

All sole source contracts and amendments subject to filing with OFM must be filed a minimum of ten-working days prior to the proposed start of work.

The dollar value for filing is determined based on either the individual contract maximum amount or a cumulative total of sole source contracts awarded to the contractor by an agency during a state fiscal year.

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Personal Service Contracts

Only sole source personal service contracts awarded to a single contractor in a state fiscal year are considered in the cumulative total. If, however, a sole source contract is awarded in one fiscal year and amended in another, the total amount of the amended contract is counted in the fiscal year of the amendment.

Competitively awarded personal service contracts, purchased service contracts or client services with the same contractor are not included in the cumulative count for sole source filing purposes. The amount paid to a contractor in a state fiscal year is also not a factor in determining the filing threshold.

1. **Filing sole source contracts based on a fiscal cumulative total for state agencies.** The dollar range for filing sole source contracts is determined based on either the amount of the individual sole source contract or a cumulative total of sole source personal service contracts and their amendments **awarded** to the contractor by an agency during the current state fiscal year.

Example 1 - If a sole source personal service contract in the amount of \$4,000 is awarded to a contractor in a state fiscal year, and another sole source contract of \$1,000 is awarded to the contractor in the same fiscal year, then the \$1,000 personal service contract is subject to filing with OFM, since cumulatively the contractor has been awarded sole source contracts of \$5,000 or more in a fiscal year.

Example 2 - If a sole source personal service contract in the amount of \$4,000 is awarded to a contractor in one state fiscal year, and in the next fiscal year a sole source contract is awarded to the contractor in the amount of \$1,000, then the \$1,000 contract is not subject to filing. The contractor has not been awarded sole source contracts of \$5,000 or more in the same fiscal year.

Example 3 - If a sole source personal service contract in the amount of \$4,000 is awarded to a contractor in a state fiscal year, and in the next fiscal year an amendment of \$1,000 is awarded to the contract, then the amendment is subject to filing because the total contract amount is \$5,000 for a sole source contract in the fiscal year.

The type of personal services performed by the contractor is not a factor in determining the requirement to file sole source contracts. The cumulative dollar amount of the sole source personal service contracts with the contractor is what is considered. Also, competitive personal service contracts awarded to a contractor during the state fiscal year are not included in this count.

Personal Service Contracts

2. **Filing sole source contracts based on a fiscal cumulative total for institutions of higher education.** Institutions of higher education do not file sole source contracts of less than \$5,000 based on a cumulative total, since the individual sole source personal service contract must include \$5,000 or more in state funds to be filed.

Amendments to filed sole source contracts are required to be filed when they revise the scope of work, add or deduct dollars to the contract and/or revise the period of performance. These amendments individually do not need to include \$5,000 or more in state funds since the contract itself does.

The cumulative sole source calculation of \$20,000 or more and OFM approval is applicable to institutions of higher education based on the total of sole source contracts and amendments which include \$5,000 or more in state funds and are awarded in a state fiscal year to a contractor.

15.30.25.b

Sole source filing review or approval. OFM **review** is required for sole source contracts and their amendments of \$5,000 to \$19,999, or those that cumulatively equal or exceed \$5,000 or more with the same contractor in a state fiscal year. OFM **approval** is required for sole source contracts of \$20,000 or more and their amendments.

Also, OFM approval is required when combined sole source contracts between the agency and the contractor during the state fiscal year total \$20,000 or more. In addition, OFM **approval** is required of amendments to sole source contracts of \$5,000 or more that result in the contract value exceeding 50 percent of the original contract amount or that substantially change the scope of work of the contract.

15.30.25.c

Sole source contract justification. The justification for a sole source contract shall include the following information:

1. Specific problem or need.

- Identify and fully describe the specific problem, requirement, or need that the contract is intended to address and that makes the services necessary. Do not simply reiterate the services to be provided.
- Include an explanation as to how the agency determined the services are critical or essential to agency responsibilities or operations and/or whether the services are mandated or authorized by the Washington State Legislature.

15
Personal Service Contracts

2. **Other public resources.** Explain what effort was taken to conclude:
 - Sufficient staffing or expertise is not available **within the agency, not just within an agency division**, to perform the service; and
 - Other governmental resources (local, state or federal agencies) **external to the agency** are not available to perform the service more efficiently or more cost effectively.

3. **Sole source criteria.** Include a detailed explanation of the items below that are relevant to the sole source decision:
 - **Unique characteristics** – Describe the unique qualifications, abilities or expertise of the contractor to meet the agency needs and/or describe the unique nature of the services. Unique qualifications or services would be those that are highly specialized or one-of-a-kind. Other factors that may be considered include past performance, cost-effectiveness (learning curve), and/or follow-up nature of the required services. Past performance alone does not provide adequate justification for a sole source contract.
 - **Special circumstances** – Provide a description of any other special circumstances that may be relevant such as confidential investigations, copyright restrictions, time constraints, or sole availability at the location required.
 - **Time constraints** – If time constraints are applicable, identify when the agency was on notice of the need for the services, the entity that imposed the constraints, explain the authority (if not obvious) of that entity to impose them, and provide the timelines for work to be accomplished.
 - **Geographic limitation** – If the proposed contractor is the only source available in the geographical area, state the basis for this conclusion and the rationale for limiting the size of the geographical area selected.

4. **Reasonableness of costs.** Since competition was not used as the means for procurement, explain how the agency concluded that the costs, fees, or rates negotiated are fair and reasonable. Either make a comparison with comparable contracts, use the results of a market survey, or employ some other appropriate means to make such a determination.

Personal Service Contracts

5. **Sole source posting and advertisement.** Sole source contracts of \$5,000 or more are required to be posted on GA WEBS prior to award. Sole source contracts of \$20,000 or more must be posted on GA WEBS and are still required to be advertised per Subsection 15.20.60. Include the name of the statewide or regional newspaper in Washington State where the advertisement was published, the date(s) of the advertisement, and the name(s) of any firms that responded. If no responses were received, please indicate. If one or more responses are received, explain how the agency concluded the contract is appropriate for sole source award. List any other potential contractors that were contacted through other means and explain why these firms could not perform the services.

If the sole source contract is exempt from advertising per Subsection 15.20.60.c, explain the basis for the exemption and include any documentation that provides the authority for the exemption, as applicable. Sole source advertisement is not required when executing an amendment to a sole source contract.

Institutions of higher education are required to advertise sole source contracts of \$20,000 or more, regardless of fund source.

A sample sole source advertisement is provided on OFM's Additional Contract Resources website at:

<http://www.ofm.wa.gov/contracts/resources/default.asp>.

15.30.25.d

Sole source contract amendment justification. For amendments to sole source contracts, the justification is to include:

- The rationale for executing an amendment rather than competitively procuring the services and awarding a new contract. Include how executing the amendment can most effectively achieve the agency's purpose.
- An explanation as to why the services under the proposed amendment were not included in the original contract (less than 50 percent amendments only).
- An explanation of any changed conditions since contract award and any other applicable information that clearly justifies the decision to amend the contract.
- Whether the new services are within the scope of services of the original contract. If not, explain.
- Whether the rates are the same as those negotiated under the original contract and explain any increases.

If the amendment is awarded to a sole source contract that was not filed, additional justification elements are required:

- Specific problem or need;
- Other public resources;
- Sole source criteria; and
- Reasonableness of costs.

If an amendment to a sole source contract results in a contract value that exceeds 50 percent of the original contract or substantially changes the scope of work, follow the justification requirements in Subsection 15.30.35.

15.30.30

July 26, 2009

Competitively solicited contract filing requirements

15.30.30.a

Competitive filings. Competitively solicited contracts of \$20,000 or more, including their amendments, must be filed with OFM. This filing category includes amendments to competitive contracts that increase the contract value to \$20,000 or more. The contracts are subject to OFM **review or approval**, depending upon the type of service being procured or the amount of the amendment. Institutions of higher education file only competitive contracts with \$20,000 or more in state funds, and their amendments.

For competitive contracts and amendments subject to OFM **review**, work may begin the date of filing with OFM. For contracts and amendments subject to OFM **approval**, work may begin no earlier than ten working days after the date of filing, subject to OFM approval.

Amendments to competitive contracts of \$5,000 or more, for any type of service that exceeds 50 percent of the value of the original contract or that substantially changes the scope of work of the contract, are subject to **approval** by OFM. The justification requirements in Subsection 15.30.35 will be used when this occurs.

Competitive contracts in the amount of \$5,000 to \$19,999 are not filed with OFM, but are reported in PSCD.

Personal Service Contracts

15.30.30.b

Competitive contract justification. Competitive justification shall include the following information:

1. **Specific problem or need:**

- Identify and fully describe the specific problem, requirement, or need that the contract is intended to address and that makes the services necessary.
- Include an explanation as to how the agency determined the services are critical or essential to agency responsibilities or operations and/or whether the services are mandated or authorized by the Washington State Legislature.

2. **Other public resources.** Explain what effort was taken to conclude:

- Sufficient staffing or expertise is not available **within the agency, not just within an agency division**, to perform the service, and
- Other governmental resources (local, state or federal agencies) **external to the agency** are not available to perform the service more efficiently or more cost effectively.

3. **Competitive process.** Provide a thorough description of the competitive solicitation process including:

- The name of the major, daily, Washington State newspaper and any other publication(s) in which an advertisement was published and/or whether GA WEBS was used.
- The number of firms to whom the agency directly provided the solicitation document or notification of the solicitation.
- Whether the solicitation or notice of the solicitation was also published on the Internet.
- The names of the firms responding with proposals.
- A description of the evaluation process (e.g., evaluation committees scored the responses, selection committee made the award decision, etc.)
- The basis on which the contractor was selected. Include the strengths of the contractor, which resulted in the higher score and selection for award. Do not simply list the evaluation criteria.

4. **Reasonableness of costs.** Explain how it was determined that costs are fair and reasonable or within the competitive range.

15.30.30.c

Contract amendment justification. For amendments to competitive contracts that have been filed, the justification is to include:

- A description of the specific problem, requirement or need which the amendment is intended to address and which makes the services necessary
- The rationale for executing an amendment rather than competitively procuring the services and awarding a new contract. Include how executing the amendment can most effectively achieve the agency's purpose.
- Whether the new services are within the scope of services of the original contract.
- Whether the option to extend the contract was included in the solicitation and for what additional period(s).
- An explanation of any changed conditions since contract award and any other applicable information that clearly justifies the decision to amend the contract.
- Whether the rates are the same as those negotiated under the original contract and explain any increases.

If the amendment is awarded to a competitive contract that was not filed, e.g., less than \$20,000, but the amendment is subject to filing, additional justification elements are required:

- Specific problem or need;
- Other public resources;
- Contractor qualifications, and
- Reasonableness of costs.

If a contract amendment exceeds 50 percent of the value of the original contract or substantially changes the scope of work, the justification requirements of Subsection 15.30.35 must be followed.

Personal Service Contracts

15.30.30.d

Filing review or approval. OFM review is required for most competitive contracts in the amount of \$20,000 or more. These include contracts in the following categories of service: legal services, financial services, computer and information services (except those for major systems as defined in management consulting), social research, technical research, and other personal services. Further description of these categories is included in Subsection 75.70.20.

However, the Washington State Legislature has taken special interest in six categories listed below and has required filing and advance OFM **approval** for those contracts and their amendments. Refer to Subsection 75.70.20 for detailed descriptions.

1. Management Services – Subobject CA
2. Organizational Services – Subobject CA
3. Marketing Services – Subobject CG
4. Communication Services – Subobject CH
5. Employee Training Services – Subobject CJ
6. Recruiting Services – Subobject CK

15.30.30.e

Civil service competitive contracting. If a personal service contract is awarded under the authority of RCW 41.06.142, referred to in this policy as civil service competitive contracting, the following justification elements are required:

- Specific problem or need;
- Evaluation; and
- Reasonableness of costs.

15.30.35

July 1, 2007

Contract amendments cumulatively exceeding 50 percent of the value of the original contract or that substantially change the scope of work

15.30.35.a

Substantial amendment filings. Large or substantial contract amendments fall into a separate filing category. Contract amendments, that singly or cumulatively exceed 50 percent of the value of the original contract, or that substantially change the scope of work of the contract or of the original solicitation document, must be filed with OFM. This applies to both competitive or sole source contracts which, when amended, total \$5,000 or more.

Institutions of higher education file these amendments only to sole source contracts that include \$5,000 or more in state funds or competitive contracts that include \$20,000 or more in state funds.

Such amendments require OFM **approval** and must be filed at least ten working days prior to the proposed start date.

15.30.35.b

Definition. "Substantial" changes to contracts are those that represent a significant change in quantity, duration, nature, or cost of the work.

An example of a substantial change that could be appropriately executed as a contract amendment is a contract in which the work is broken into phases and approval of additional phases (through contract amendment) is subject to satisfactory completion of a previous phase, and such work phasing is clearly set forth in the solicitation document or original contract.

Another example is an amendment to a contract that exercises the option to extend the work at the discretion of the agency (e.g., extending a two-year contract for one additional year).

15.30.35.c

Amendment justification. Justification for an amendment in this filing category, when the contract was filed, shall include the following information:

1. **Specific problem or need.** Identify and fully describe the specific problem, requirement, or need that the contract and this amendment is intended to address and that makes the services necessary.

Personal Service Contracts

2. For an amendment to a competitive contract.

- Provide an explanation of the **contractor's qualifications**, abilities, and/or expertise to meet the agency's specific needs for the services under the amendment.
- State if the **option to extend** the contract was included in the solicitation and for what additional period(s). If the amendment is for a time extension only, and is not adding money or services, just state why the additional time is needed.

3. Why amendment preferred.

State the rationale for executing an amendment to the existing contract rather than competitively procuring the services and awarding a new contract. Include how executing the amendment can most effectively achieve the agency's purpose. Include whether the new services are **within** the scope of the original contract and/or, if competitively awarded, **within** the scope of the solicitation document. If not, explain.

4. Changes since award.

Explain any external conditions beyond the agency's control that have occurred since contract award that provide further justification for award of the amendment.

5. Reasonableness of costs.

State if the rates are the same as those in the original contract. If not, explain the reason for any increased pricing.

15.30.35.d

Amendment to unfiled contract. If an amendment in this category is awarded to a **sole source** contract that was **not** filed, additional justification elements are required:

- Specific problem or need;
- Other public resources;
- Sole source criteria; and
- Reasonableness of cost.

If an amendment in this category is awarded to a **competitive** contract that was **not** filed, additional justification elements are required:

- Specific problem or need;
- Other public resources;
- Contractor qualifications; and
- Reasonableness of cost.

15.30.40 **Emergency contracts**

July 1, 2007

Emergency contracts are awarded to resolve an emergency situation. An "emergency" means a set of unforeseen circumstances beyond the control of the agency that either presents a real, immediate threat to the proper performance of essential state functions or that may result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken. Lack of prior planning does not constitute an emergency.

Examples of emergency contracts include post-earthquake assessments and evaluations, fire damage consultation, and personnel investigations, when they are extremely critical and time-sensitive.

15.30.40.a **Emergency filings.** Emergency contracts, and their amendments, in the amount of \$5,000 or more are subject to filing with OFM.

Such contracts and amendments must be filed with OFM for **review** within three working days following the date of contract execution or start of work, whichever occurs first.

Amendments to emergency contracts are rare. If the emergent contract conditions still exist, then an amendment to an emergency contract is appropriate. If the conditions have been alleviated and are not severe, the amendment filing should be designated a sole source amendment to an emergency filing and is subject to the ten-working day filing period.

15.30.40.b **Emergency contract justification.** Emergency justification shall include the following information:

- **Nature of emergency.** Explain the nature of the emergency and the relevant circumstances associated with the emergency.
- **Health or safety threat.** Describe the threat to the health or safety of individuals, property, or essential state functions if immediate action is not taken. Provide an estimate of the potential material loss or damage.
- **Alleviate or eliminate emergency.** Explain how the services of the contractor will alleviate or eliminate the emergency. Describe what the probable consequences would have been if the emergency action had not been taken and the risks associated with inaction.

Personal Service Contracts

- **Contractor’s qualifications.** Describe the contractor's qualifications, experience, and background to provide the emergency service and the basis on which this contractor was selected over other qualified firms.
- **Reasonableness of costs.** Explain how the agency concluded that the costs negotiated are fair and reasonable since competition was not conducted.

15.30.40.c

Emergency contract amendment justification. If the emergent contract condition still exists, the agency may file the amendment as an “emergency” amendment which shall include:

- **Rationale for the amendment.** The rationale for executing an amendment rather than competitively procuring the services and awarding a new contract. Include how executing the amendment can most effectively achieve the agency’s purpose.
- **Why not included previously.** An explanation as to why the services under the proposed amendment were not included in the terms of the original contract.
- **Changed conditions.** An explanation of any changed conditions since contract award and any other applicable information that clearly justifies the decision to amend the contract.
- **Within scope.** Whether the new services are within the scope of services of the original contract.
- **Rates the same.** Whether the rates are the same as those negotiated under the original contract and explain any increases.

15.30.40.d

Unfiled emergency contract. If the amendment is awarded to an emergency contract that was **not** filed, e.g., less than \$5,000, but the amendment is subject to filing, additional justification elements are required:

- Nature of the emergency;
- Health or safety threat;
- Contractor’s qualifications; and
- Reasonableness of costs.

15.30.45 OFM response to filings

July 1, 2007

The agency should expect to receive either a written or oral response from OFM within ten working days from the date of filing. If the filing is incomplete or needs clarification, OFM will request further information prior to processing, and this may delay OFM's final decision. If a filing is incomplete and/or lacking in content, OFM may return it to the agency to be revised and re-filed.

- 15.30.45.a Once OFM has completed processing of the filing, the agency will receive electronic verification of OFM's decision from the PSCD.
- 15.30.45.b If OFM anticipates disapproval of a filing, the agency will be notified promptly.
- 15.30.45.c The decision to disapprove a filing will be in writing from OFM through the PSCD and will clearly state the reason for disapproval.

15.30.50 Late filing

July 1, 2007

- 15.30.50.a Contracts or amendments are designated "late" when:
- Contracts or amendments subject to the ten-working day filing period are filed with a requested start date that is less than ten working days from the date of filing.
 - Competitively solicited contracts or their amendments subject to OFM review are filed after the start date of services.
 - Emergency contracts or their amendments are filed more than three business days after the start of work or execution of the contract.
- PSCD will request an explanation as part of the filing justification stating:
1. The reason for the late filing, and
 2. How a similar situation will be prevented in the future.
- 15.30.50.b In the rare instances when contract filings are submitted to OFM after work under the contract or amendment is completed, OFM will "acknowledge" receipt of the filing and process it. However, OFM will not consider the filing formally reviewed or approved by OFM.

15.30.55
January 1, 2008

Reporting of personal service contracts that are not subject to filing

OFM is required to maintain a publicly available list of personal service contracts awarded by state agencies. Contracts and amendments filed with OFM throughout the year are automatically included on the list. Personal service contracts that are not filed must be reported to OFM as follows:

State agencies, exclusive of institutions of higher education, report:

- Competitively awarded personal service contracts and amendments in the amount of \$5,000 - \$19,999.

However, if an amendment to a reported contract results in a revised contract total of \$20,000 or more or results in the contract exceeding 50 percent of the original contract amount, then the amendment should be filed. When filing, include the original contract amount that had been reported in the “Original Contract Value” field, so that the correct revised contract total is reflected in PSCD. If applicable, also include the value of any prior amendments that were not subject to filing in the “Total Value of Prior Amendments to Date” field.

Institutions of higher education report:

- Competitively awarded personal service contracts and amendments in the amount of \$5,000 - \$19,999, any fund source.
- Competitive personal service contracts and amendments in the amount of \$20,000 or more, which are funded by dollars other than state funds, or that include less than \$20,000 in state funds.
- Sole source contracts and amendments in the amount of \$5,000 or more, which are funded by dollars other than state funds, or that include less than \$5,000 in state funds. These contracts are not considered cumulatively for reporting purposes.
- Emergency contracts of \$5,000 or more, which are funded by dollars other than state funds, or that include less than \$5,000 in state funds.

If an amendment to the above categories of contracts is subject to filing with OFM, then the amendment should be filed. When filing, include the original contract amount that was reported in the “Original Contract Value” field, so that the correct revised contract total is reflected in PSCD. If applicable, also include the value of any prior amendments that were not subject to filing in the “Total Value of Prior Amendments to Date” field.

15
Personal Service Contracts

Reported contract information is to be submitted to OFM through the Personal Service Contract Database (PSCD). The reported contracts and amendments can be submitted into PSCD at time of award or at the end of the fiscal year. It is often more efficient to report them at time of award, rather than compiling and entering all the data at the end of the fiscal year.

Agencies do not report contracts that are exempt under RCW 39.29.040 and described in Subsection 15.10.20.

At a minimum, the following information shall be entered into the PSCD for reporting personal service contracts and amendments:

- Agency Number;
- Agency Contact Name(s);
- Name, address and Federal Tax Identification Number of the contractor;
- Whether the entry is a new contract or an amendment;
- Contract/amendment start and end dates;
- Dollar value of contract or dollar value of amendment if being reported;
- Fund source;
- Description of scope of work;
- Procurement type, e.g., whether competitive, sole source, emergency, or civil service competitive; and
- Whether the contractor, or a member of the contractor's key project staff, is a current or former state employee:
 - o If a current state employee, document whether Executive Ethics Board approval is required. If so, indicate whether approval was granted for the contract or, if not, why not.
 - o If a former employee of the state of Washington in the past 24-months, state the name of the agency the employee worked for, last position held, and termination date.

Personal Service Contracts

15.30.60

July 1, 2007

Annual contract procedures report

15.30.60.a

RCW 39.29.110 requires state agencies that have awarded or renewed personal service and/or client service contracts during a calendar year (January – December) to provide a report to OFM detailing the procedures the agency employed in awarding, renewing and managing the contracts. The contract procedures report is due to OFM by **January 31** of each calendar year.

15.30.60.b

This policy addresses personal service contracts, but the report applies to both personal service and client service contracts, so both items are included below.

The following items are required as part of submitting the Annual Contract Procedures Report:

1. **Contract procedures.** A copy of, or a web site link for, the agency's procedures on personal service contracts; or if an agency does not have written internal contract procedures in place, but the agency utilizes the policies in Chapter 15, those policies should be referenced.
2. **Contract totals.** OFM has the totals for personal service contracts, if the agency has filed and reported its personal service contracts, as required. Therefore these totals do not need to be provided for personal services.

15.30.65

July 1, 2007

Quarterly reporting requirements for architectural and engineering contracts

RCW 39.80.070 requires that contracts and amendments for architectural and engineering services shall be reported to OFM no less than quarterly. For purposes herein, quarters shall be for the three-month periods ending September, December, March, and June of each fiscal year.

15.30.65.a

Reported architectural and engineering contracts and amendments are to be entered into the OFM Personal Service Contract Database (PSCD). The entries in the database may occur at time of contract award or amendment execution, rather than at the end of the quarter. If the data is submitted on a quarterly basis, the quarterly reports shall be entered into the OFM database no later than the fifteenth day of each month following the end of the quarter; e.g., October 15, January 15, April 15, and July 15. If the fifteenth day falls on a Saturday, Sunday or state holiday, the report is due the next working day.

15.30.65.b The following information shall be entered into the PSCD for the quarterly architectural and engineering contract report:

- Agency Number;
- Agency Contact Name(s);
- Name, address and Federal Tax Identification Number of the contractor;
- Whether the entry is a new contract or an amendment;
- Contract/amendment start and end dates;
- Dollar value of original contract or dollar value of amendment being reported;
- Description of the project;
- Whether the contractor, or a member of the contractor's key project staff, is a current or former state employee:
 - If a current state employee, document whether Executive Ethics Board approval was required. If so, indicate whether approval was granted for the contract or, if not, why not;
 - If a former employee of the state of Washington in the past 24 months, state the name of the agency the employee worked for, last position held, and termination date; and
- Whether the contract was competitively procured per chapter 39.80 RCW.

15.30.70

July 1, 2007

Summary report on contracts

Upon request, OFM will provide other summary reports on personal service contract filings to the Joint Legislative Audit and Review Committee.

15.30.75

July 26, 2009

Contract filing and reporting categories for personal service contracts

For **state agencies**, refer to Subsection 15.30.75.a.

For **institutions of higher education**, refer to Subsection 15.30.75.b

PERSONAL SERVICE CONTRACT FILING & REPORTING CATEGORIES
(State Agencies Only - Exclusive of Institutions of Higher Education)

15.30.75.a

Personal Service Contracts/Amendments	\$ Threshold For Filing	OFM Review or Approval	Filing Period	Report to OFM**
SOLE SOURCE Contracts and Amendments (singly or cumulatively awarded to a contractor in a fiscal year period by an agency)	\$ 5,000 - \$19,999	Review*	10-working day advance filing	
	\$20,000 or more	Approval	10-working day advance filing	
EMERGENCY Contracts and Amendments	\$5,000 or more	Review	3-working days from date of execution or start of work, whichever is sooner	
COMPETITIVE Contracts and Amendments	\$5,000 to \$19,999			X
COMPETITIVE Contracts and Amendments for legal services, financial services, computer and information services (except those included in the management consulting category), social research, technical research and other services (not included in the categories in the row below) (Refer to Subsection 75.70.20 for descriptions of these categories.)	\$20,000 or more	Review*	Work may start on or after the working day filed with OFM.	
COMPETITIVE Contracts and Amendments for: Management Consulting, Organizational Development, Marketing, Communications, Employee Training and Employee Recruiting. (Refer to Subsection 75.70.20 for descriptions of these categories.)	\$20,000 or more	Approval	10-working day advance filing	
AMENDMENTS to competitive or sole source contracts that result in the contract amount being greater than 50% of the original contract value and/or amendments that constitutes a substantial change in the scope of work, when the amendment results in the contract amount being \$5,000 or more after being amended.	\$5,000 or more (Contract, when amended, totals \$5,000 or more)	Approval	10-working day advance filing	

* If contract amendments in these categories result in the contract exceeding 50% of the original contract amount or if they make a substantial change in the scope of work, the amendment is subject to OFM approval, rather than to review. Such amendments should be filed under the greater than 50% amendment category.

** Contracts and amendments subject to reporting to OFM should be reported ideally at the time of award or at the end of the fiscal year.

Note: Subsection 15.30.15.e lists types of amendments that are not subject to filing.

15.30.75.b

PERSONAL SERVICE CONTRACT FILING & REPORTING CATEGORIES
(Institutions of Higher Education Only)

Personal Service Contracts/Amendments	Fund Source	File with OFM	Filing Period	Report to OFM***
SOLE SOURCE Contracts and Amendments (singly or cumulatively awarded to a contractor in a fiscal year period by an agency) (Contract must have \$5,000 or more in state funds to be filed; therefore contracts with less than \$5,000 in state funds are not calculated cumulatively for filing purposes, as they are for reporting purposes. For reporting, sole source contracts must be in the amount of \$5,000 or more.) \$ 5,000 - \$19,999	State Funds * \$5,000 or more	OFM Review **	10-working day advance filing	
	Non-State Funds or <5K State Funds			X
SOLE SOURCE Contracts and Amendments (singly or cumulatively awarded to a contractor in a fiscal year period by an agency) (Contract must have \$5,000 or more in state funds to be filed; therefore contracts with less than \$5,000 in state funds are not calculated cumulatively for filing purposes, as they are for reporting purposes.) \$20,000 or more	State Funds * \$5,000 or more	OFM Approval	10-working day advance filing	
	Non-State Funds or <5K State Funds			X
EMERGENCY Contracts and Amendments - \$5,000 or more	State Funds * \$5,000 or more	OFM Review	3-working days from date of execution or start of work, whichever is sooner	
	Non-State Funds or <5K State Funds			X
COMPETITIVE Contracts and Amendments - \$5,000 - \$19,000	Any Fund Source \$5,000 - \$19,999			X
COMPETITIVE Contracts and Amendments for legal services, financial services, computer and information services (except those included in management consulting), social research, technical research, and other services (not included in the management-type categories in the row below) \$20,000 or more	State Funds * \$20,000 or more	OFM Review **	Work may start on or after the working day filed with OFM	
	Non-State Funds or <20K State Funds			X
COMPETITIVE Contracts and Amendments for: Management Consulting, Organizational Development, Marketing, Communications, Employee Training and Employee Recruiting \$20,000 or more	State Funds * \$20,000 or more	OFM Approval	10-working day advance filing	
	Non-State Funds or <20K State Funds			X
AMENDMENTS to competitive or sole source contracts that result in the contract amount being GREATER THAN 50% of the original contract value or that constitute a substantial change in the scope of work, when the amendment results in the contract amount being \$5,000 or more after being amended. Contract, when amended, totals \$5,000 or more	State Funds * Sole Source, \$5,000 or more; Competitive, \$20,000 or more	OFM Approval	10-working day advance filing	
	Non-State Funds or <5K State Funds if Sole Source and <20K State Funds if Competitive			X

* State Funds for the purposes of filing means dollars that are: 1) appropriated by the Washington State Legislature, and/or 2) allotted by the agency. If a contract or amendment contains both state and non-state funds, it is filed only if the state-funded portion equals or exceeds: a) \$5,000 for sole source and emergency contracts, or b) \$20,000 for competitive contracts. Non-state funded contracts and amendments in these categories are reported to OFM.

** If contract amendments in these categories result in the contract exceeding 50% of the original contract amount or if they make a substantial change in the scope of work, the amendment is subject to OFM approval, rather than to review. Such amendments should be filed under the greater than 50% amendment category, subject to fund source.

*** Contracts and amendments subject to reporting to OFM should be reported ideally at the time of award or at the end of the fiscal year.

Note: Subsection 15.30.15.e lists types of amendments that are not subject to filing.



15.40 Personal Service Contracts – Contract Award, Management, and Monitoring

15.40.05 July 1, 2007

Purpose of this policy

This policy serves as the basis for awarding, managing, and monitoring personal service contracts.

15.40.10 July 1, 2007

Contract negotiations

Part of the process of awarding a personal service contract under a competitive solicitation or a sole source process is to negotiate the specific contract terms. Any discussions, whether formal or informal, that are held with the apparent successful contractor to develop and finalize the contract are considered contract negotiations.

Under a competitive process, negotiations may be held with the apparent successful contractor if more favorable terms are desired than were submitted in the proposal or if the proposal is not sufficiently precise or direct.

Areas in the proposal that may be considered less than satisfactory include: time devoted to the project or phases of the project by the consultant, scheduling related to the items in the scope, pricing, billing terms, etc.

Under a sole source award, price negotiations may be necessary if the consultant costs proposed seem higher than expected.

Negotiations should not substantially change the terms of the original proposal, but should eliminate any ambiguities in the contract and clarify the terms. If the terms offered by a contract are fair and equitable, award may be made without negotiations.

15.40.15

November 29, 2010

Formalizing personal service contracts

15.40.15.a

Written contract. All personal service contracts, regardless of dollar amount, require a **written** document specifying the agreement between the agency and the contractor.

Required elements in a personal service contract are:

- Identification of all parties to the contract;
- Scope of services that clearly describes the responsibilities and obligations of the parties including for performance-based contracts, deliverables, performance measures or outcomes;
- Maximum compensation: The contract maximum is to include funding to cover contractor expenses if they are to be paid under the contract.
- Period of performance, including start and end dates or a statement, for example, that the end date is two years from the start date;
- Payment mechanism that describes the basis on which the contractor will be paid for services whether an hourly/daily/weekly/monthly rate, by deliverable, completion of a project phase or milestone, achievement of a performance target or outcome, lump sum, etc; for performance-based contracts, payment is tied to performance; and
- Signatures of all responsible parties.

Numerous other terms are often included in the contract documents to provide additional legal protection to the State. These are often designated as General Terms and Conditions and Special Terms and Conditions. General Terms and Conditions are those terms that have been determined by the Office of the Attorney General to apply to most personal service contracts. The Special Terms and Conditions are the terms specific to a contract and generally include the items listed above as mandatory for a contract, but also may include terms such as billing procedures, filing requirements, insurance, contract management, order of precedence, etc.

Personal service contracts cannot be awarded that do not allow access to data generated under a contract to support a contractor's recommendations or conclusions. Access to the data must be granted to the agency awarding the contract, the Joint Legislative Audit and Review Committee and the State Auditor's Office.

Data in the context of RCW 39.29.080 includes all information that supports the findings, conclusions, and recommendations of the consultant's reports, including computer models and the methodology for those models. This applies when formal recommendations or conclusions are provided to the agency under the contract, not to all personal service contracts.

All work must be performed within the contract period of performance, including deliverables. Contractors can only charge for services and expenses that occur within the contract period of performance.

In some instances, a third party makes the payment to a contractor under a personal service contract. The agency does not pay the contractor directly for the services. When that occurs, the contract must clearly describe the payment approach including how and when the third party will pay the contractor. A maximum dollar amount is still required under the personal service contract based on the agency's calculation of what the maximum amount payable to the contractor by the third party will be.

Amendments to personal service contracts must also be in writing.

A sample personal service contract is available on OFM's Additional Contract Resources website at:
<http://www.ofm.wa.gov/contracts/resources/default.asp>.

15.40.15.b **Contract format.** Agencies may choose a contract format appropriate to the services being acquired, provided that the required elements identified in Subsection 15.40.15.a are included. For example, an agency may wish to use a short-form contract or letter of agreement where the contract is not complex or where the contract consideration is less than \$5,000.

15.40.15.c **Approval as to form.** Approval as to form by the Office of the Attorney General (ATG) verifies the legality of the contract instrument, but does not necessarily imply concurrence in or approval of the content. It is a good business practice to have the agency's contract format or template reviewed "as to form" by the ATG prior to usage. As long as the ATG-approved contract format is used, it is not necessary that each contract executed by the agency be approved "as to form" by the ATG.

In addition to approval "as to form," it is advisable to have contracts reviewed by an Assistant Attorney General for "substance and content," whenever additional legal advice is needed prior to finalizing the document. Each agency may determine which contracts they submit to the ATG for review.

Personal Service Contracts

15.40.15.d **Available funding.** Agencies shall not execute a personal service contract or amendment that increases funding unless funding is available for the contract services prior to execution of the contract or amendment.

Agencies must identify the source and amount of funds to be used for the contract. If the contract is federally funded, state agency staff must ensure that the appropriate contract language regarding federal requirements is included in the contract. This includes suspension/debarment language, A-133 Single Audit language, and any other federal requirements appropriate for the fund source. Federal rules and regulations may also supersede state rules and regulations, and this should also be clear in the contract.

15.40.15.e **Contract signature.** The contract is fully executed when all authorized parties have signed it. In most instances, contracts must be signed by the parties before work begins (emergency contracts are an exception). Upon execution, signed copies of the contract must be provided to all parties to the contract.

15.40.15.f **Structuring contracts.** Agencies shall not structure contracts, especially the dollar amounts, to avoid the competitive procurement or other requirements of the contract policies. It is not appropriate to award contracts in the amounts of \$4,999 or \$19,999 without budget documentation. These amounts give the appearance of avoiding either informal or formal competition, avoiding filing the contract with OFM, or of advertising it as a sole source.

15.40.15.g **Personal information.** Contract records may occasionally contain personal information about citizens.

Privacy Notice: Safeguarding and disposition of personal information must be consistent with Executive Order 00-03 issued April 25, 2000, and chapter 42.56 RCW and other applicable statutes that protect personal information.

15.40.20

November 29, 2010

Performance-based contracts

15.40.20.a

All cabinet agency personal services contracts must be performance-based. Non-cabinet agencies are encouraged to use performance-based contracting.

At a minimum, performance-based contracts must identify expected deliverables, performance measures or outcomes; and payment is contingent on their successful delivery. Performance-based contracts also use appropriate techniques, which may include but are not limited to, consequences and/or incentives to ensure that agreed upon value to the state is received.

Performance-based contracts:

- Emphasize results related to output, quality and outcomes rather than how the work is performed;
- Specify deliverables, performance standards and/or an outcome orientation and clearly defined objectives and timeframes;
- Use quality assurance plans, measurable performance standards and/or outcomes;
- Provide performance incentives and/or consequences for non-performance; and
- Tie payment to deliverables, performance measures and/or outcomes.

Performance-based contracting must be carefully considered since deliverables, performance measures and/or outcomes need to be clearly identified in the contract, so that achievement of those deliverables, performance measures and/or outcomes is apparent to all.

15.40.20.b

Performance-based contracts offer **benefits**. For example, they:

- Encourage and promote contractors to be innovative and to find cost effective ways to deliver services;
- Result in better prices and performance;
- Give contractors more flexibility in how to achieve results;
- Shift more risk to contractors so they are responsible for achieving the outcomes;

Personal Service Contracts

- Provide incentives to improve contractor performance and tie compensation to achievement; and
- Strengthen agencies contract monitoring and management practices.

15.40.20.c

Potential issues associated with performance-based contracts include:

- Adequate management information systems may not be in place to correctly interpret data;
- Meeting expected deliverables, performance measures or outcomes may be contingent on factors outside of the contractor's control;
- Contractors may have limited financial resources and capacity to assume risk;
- Contractors fear a cash flow crisis and financial uncertainty; and/or
- Contractors may have under-developed financial information management systems.

In those cases where it is not cost effective for the state to use a performance-based contract, a cabinet agency may exempt a contract from the requirement to include deliverables, performance measures and/or outcomes. All exemptions must be approved in writing by the agency director before the agency enters into the contract.

15.40.25

November 29, 2010

Performance measures and outcomes

The purpose of including expected deliverables, performance measures or outcomes within a contract is to provide a standard or measure for performance of the contracted services. These may also be used to determine if, and when, the contractor has successfully completed performance, and when and how much the contractor should be paid.

Contract deliverables, performance measures or outcomes may:

- Define the standards for measuring contractor performance;
- Provide a means to monitor performance;
- Measure satisfaction with the contractor; or
- Provide data for program evaluation.

Good statements of deliverables, performance measures or outcomes are:

- Clearly written;
- Easily understood by contractors, state agencies, and the general public;
- Focused on the performance expected from the contractor;
- Well defined and consider both the quantitative (how much?) and qualitative (how well?) aspects of performance;
- Relevant, timely, verifiable and reportable; and
- Realistic in terms of available resources, funding and timelines, and recognize external factors beyond the control of the system.

Contract managers should check the funding source or statutory authority to determine whether any specific deliverables, performance measures or outcomes are mandated. They should also consider:

- How the agency will know the service has actually been provided;
- How the agency will know the *quality* of services has been provided and include a mechanism for measuring quality;
- What specific deliverables, performance measures or outcomes the agency is looking for, such as enhanced job retention, reduced recidivism, or improved safety of citizens following a natural disaster; and/or
- Whether payment is contingent on an event, product, or outcome. If so, how the agency will ascertain that the contractor has satisfied the requirement. If the payment points are not clear, consider the benefit of tying payment to an event, product or outcome.

15.40.30

November 29, 2010

Fiscal considerations and payment methods

15.40.30.a

Fiscal principles. Fiscal principles that apply to personal service contracts include, but are not limited to:

- State agencies must pay reasonable and fair prices for services.
- Payment to the contractor must be made according to the terms of the contract. A clear statement of work should directly correlate to the method of compensation in the contract.
- Contractors must have accounting methods and systems that are describable and auditable, applicable to the circumstances. Contractors must comply with accounting measures and principles appropriate to the contractor's type of entity and as identified in the contract.
- State agencies must use the accounting methods and systems published in this manual.
- Payments made under personal service contracts must be applicable to the services provided and consistent with the rates and fees agreed upon.
- Payments made under personal service contracts must be adequately documented and supported by appropriate accounting records maintained by both the state agency and the contractor.
- Payments should not be made for the same or similar services more than once (no duplicate payments to contractors).
- State agencies are to pay contractors for services in a timely manner (RCW 39.76.010). This is contingent upon the contractor completing work satisfactorily and submitting accurate and complete invoices.
- State agencies should track fund sources to ensure over-payments don't occur in any particular fund.
- State agencies should have a means to recover contract over-payments if discovered.

15.40.30.b **Financial reporting.** Financial reporting provisions may require a contractor to report on or allow access to their financial information at defined intervals during the contract or upon contract completion or termination. The purpose of financial reporting provisions is to aid in monitoring contractor performance and/or verify fiscal accountability, and to allow contract managers to make informed decisions about the contractor's ability to perform or meet contract requirements.

Key considerations for financial reporting provisions are to:

- Define the type of financial information and documentation required;
- Specify dates or intervals for reports, if any;
- Require access to contractor staff, records, and place of business, as appropriate; and
- Authorize monitoring of financial records.

15.40.30.c **Payment methods.** Contracts must describe the basis upon which the contractor will be paid for services, whether based on an hourly, daily, weekly or monthly rate, per deliverable cost, fixed fee, progress payments, achievement of a performance measure, outcome, or other applicable method.

The method, or combination of methods, selected should best ensure delivery of quality services, encourage efficiencies and effectiveness of services, and provide the best value to state agencies. Clearly defining the payment terms will ensure both the contractor and agency have the same understanding about payment and will help mitigate confusion or potential project delays and disputes.

15.40.30.d **Payment documentation.** The contract should define the documentation required to authorize payment, to assist the contractor in invoicing correctly so that the contract manager can expedite approval of the invoice for payment.

At a minimum, invoices submitted should include contract number, date(s) service was provided, description of services provided or any goods received, and approval for payment.

The approval for payment can be documented by the initials of the approving staff and date on the contractor's invoice, or by an electronic approval process. For further information, refer to Subsection 85.32.30.

Personal Service Contracts

15.40.30.e **Contract overpayment.** If an overpayment to a contractor is discovered, the agency must take appropriate action. Contract managers should consult with their accounting or auditing staff, their internal legal staff, and/or with the Office of the Attorney General for guidance.

15.40.30.f **Federally funded contracts.** Contracts supported with federal funds, whether in whole or in part, are subject to federal requirements. Such requirements may be the result of federal statutory provisions, administrative regulations adopted by federal agencies, administrative guidelines distributed by federal agencies or contract award provisions.

There are basic federal rules that apply to virtually all expenditures of federal awards. Each federal agency and the U.S. Office of Management and Budget (OMB) publish these rules as listed below:

1. **Uniform administrative requirements:**

- a) State and local governments (including recognized Indian entities):
 - Grants Management Common Rule adopted by federal agency Code of Federal Regulation (CFR) (OMB Circular A-102).
- b) Institutions of higher education, hospitals, and nonprofit organizations:
 - Uniform Administrative Requirements adopted by federal agency CFR (OMB Circular A-110).
- c) For-profit organizations:
 - Administrative Requirements adopted by federal agency CFR.

2. **Cost principles requirements:**

- State and local governments (including recognized Indian entities) (OMB Circular A-87).
- Educational Institutions (OMB Circular A-21).
- Nonprofit Organization (OMB Circular A-122).

3. **Audit requirements** for all nonfederal entities:

- Audit common rule adopted by federal agency CFR.
- OMB Circular A-133, including Appendix B – Compliance Supplement.

Federal agency regulations including the CFR and OMB Circulars can be accessed on the Internet at: <http://www.gpoaccess.gov/cfr/index.html>, and <http://www.whitehouse.gov/OMB/circulars>.

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The federal agency regulations and the OMB Circulars are routinely updated. Contract managers of contracts involving federal funds are encouraged to stay abreast of such changes by consulting with fiscal staff or other individuals that follow federal requirement amendments.

15.40.30.g

Sub-recipient or vendor. When federal funds are involved, a determination should be made before a client service contract is written as to whether the contractor is a sub-recipient or vendor. The administrative and management requirements for each differ significantly. The correct designation ensures compliance with applicable federal regulations and determines whether an audit is required of the contractor.

A **sub-recipient** is a non-federal entity that expends federal funds received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program.

A **vendor** is a dealer, distributor, merchant or other seller providing goods or services that are required for the conduct of a federal program. Refer to Section 50.30 for further guidance about the sub-recipient/vendor determination and OMB Circular A-133 Audits of States, Local Governments, and Non-Profit Organizations, Subpart B-Audits, 210 Sub-recipient and vendor determinations.

Contracts should be clearly written to support the determination of sub-recipient or vendor status.

A **sub-recipient** may:

- Determine who is eligible to receive federal assistance;
- Have its performance measured against whether the objectives of the federal program are met;
- Have responsibility for programmatic decision-making;
- Have responsibility for adherence to applicable federal program compliance requirements; and
- Use federal funds to carry out an agency's program as compared to providing goods or services.

A vendor:

- Provides the goods or services within normal business operations;
- Provides similar goods or services to many different purchasers;
- Operates in a competitive environment;
- Provides goods or services that are ancillary to the operation of the federal program; and
- Is generally not subject to compliance requirements of the federal program.

In some instances, a contractor could be a sub-recipient for one state agency and a vendor for another. A contractor could also be a sub-recipient for one program within an agency, and a vendor for another program within the same agency.

15.40.30.h

Debarment/suspension. The federal suspended/debarred list identifies contractors who cannot be given federally funded contracts. No federal contracts may be awarded to contractors on the federal suspended/debarred list.

15.40.35

July 1, 2007

Liability insurance

15.40.35.a

Before conducting a personal service procurement, the agency should analyze the type of services required and evaluate the State's exposure to legal liability that may result from the contract. State agencies can be financially protected from those who seek legal recourse by requiring contractors to carry insurance. To protect the State's interests on contracts where insurance is appropriate, liability insurance requirements should be included in either the solicitation document as a condition of responsiveness or in the contract document.

Injury or damage to a third party may result in legal liability to the State if it occurs as a result of a contractor's negligence. Liability insurance covers legal liability of an insured. If a contractor provides liability insurance coverage and names the State as an additional insured on the policy, the State will have insurance protection for many types of tort claims that arise out of the contractor's activities.

Personal Service Contracts

15.40.35.b The OFM, Risk Management Division (RMD), recommends that agencies include insurance requirements in their contracts, whenever applicable. At a minimum, RMD suggests that contractors be required to purchase general liability/automobile liability and employer's liability insurance and comply with workers compensation laws. For more information on RMD's suggested insurance specifications, refer to *Contracts: Transferring and Financing Risk*. This manual is available in hard copy through RMD or on OFM's RMD website at: <http://www.ofm.wa.gov/rmd/default.asp>.

If you have further questions, you may contact RMD at (360) 902-7301. Contract managers should contact internal agency staff, who may be knowledgeable about insurance requirements, before contacting RMD.

15.40.40

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Industrial insurance

15.40.40.a When a state agency enters into a personal service contract, the contractor's employees should be covered by industrial insurance also called workman's compensation. This protects the State's interest if either the contractor or someone employed by the contractor is injured while performing work under the contract.

With few exceptions, Title 51 RCW, Washington State's industrial insurance law, requires that all persons performing work under contract in Washington State be covered by industrial insurance. Contractors are required to provide industrial insurance coverage either through the Department of Labor and Industries (L&I) or as self-insured employers certified by L&I. Agencies can verify a contractor's compliance by contacting L&I, Field Audit Compliance, in Olympia at (360) 902-4752 or 902-4750, or by sending an e-mail to: verifystatecontracts@lni.wa.gov.

Employments excluded from mandatory coverage are listed in RCW 51.12.020 and include sole proprietors, partners, corporate officers, and others.

15.40.40.b Under RCW 51.12.050, the contracting agency is responsible for ensuring that the prime contractor and any subcontractors have industrial insurance coverage as the agency may be liable for unpaid industrial insurance premiums. As appropriate, agencies should incorporate into their personal service contracts a provision stating that the contractor agrees to comply with the industrial insurance requirements of Title 51 RCW and to cover its employees with industrial insurance.

15.40.45 Risk assessment approach to contracting

July 1, 2007

15.40.45.a **Risk assessment approach.** The risk-assessment approach to contracting is intended to assist contract managers in analyzing the contract services and contractor's qualifications in order to better focus their oversight efforts on higher risk contracts. A risk assessment evaluates risk factors to determine how much monitoring and/or auditing should be done to protect the agency's interests.

The risk assessment may be conducted informally or formally depending on the dollar value of the contract, complexity of the services, experience of the contractor, etc. An informal risk assessment is the analysis conducted by the contract manager to make effective contracting decisions and is not required to be in writing. A formal risk assessment is conducted in writing and documents the types of activities and factors considered.

Sample risk assessment checklists are provided on OFM's Additional Contract Resources website at:

<http://www.ofm.wa.gov/contracts/resources/default.asp>.

15.40.45.b **Risk assessment categories.** Risk factors can be broken into two broad categories: 1) risks associated with the services, and 2) risks associated with contractors.

1. **Risks associated with the services.** Examples of factors that may be considered in assessing risk include the following:

- **Funding** – Is the amount of funding small or large?
- **Complexity** – Are service requirements simple, complex, or sensitive? Will major public policy issues be impacted?
- **Payment method** – What type of payment method will be used, e.g., cost reimbursement, fee for service, performance-based, etc.? What experience does the state agency have with the method?
- **Competition** – Will the contract be awarded on a competitive basis with detailed evaluation of the proposal, costs, and contractor qualifications, or will it be awarded as a sole source?

Personal Service Contracts

2. **Risks associated with contractors.** Examples of factors that may be considered in assessing risk include:

- **Funding that the contractor receives from the agency** – Is the amount of funding from the agency small or large? Does the contractor have many or few contracts with the State?
- **Length of time in business** – Has the contractor been in business for several years or is the business new?
- **Experience and past performance** – Does the contractor have contracts for similar services with other governmental entities? How extensive is the contractor's experience providing this type of service for the State? What is the contractor's performance history?
- **Accreditation/licensure** – Is the contractor licensed and insured?
- **Financial health and practices** – Is the contractor's financial condition good? Does the contractor demonstrate sound financial practices? Is the contractor's financial record keeping system adequate for the number and complexity of funding sources being managed?
- **Board of directors** – If the contractor is a nonprofit organization, does the board take an active role in directing the organization, establishing management policies and procedures, and monitoring the organization's financial and programmatic performance? Is the board comprised of individuals who are unrelated? Do employees or former employees of the organization serve as board members?
- **Subcontracting** – Does the contractor subcontract key activities? Does the contractor have an effective monitoring function to oversee subcontractors?
- **Organizational changes** – Has there been frequent turnover of contractor management, senior accounting staff or key program personnel? Has the contractor started any new services within the last twelve months? Has the contractor experienced a recent rapid growth or downsizing? Has the contractor experienced reorganization within the last twelve months? Has the contractor changed major subcontractors recently?

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- **Management structure** – Is the organization centralized or decentralized? How much control does the organization have over decentralized functions?
- **Legal actions** – Have any lawsuits been filed against the contractor within the last twelve months?
- **Defaulted contracts** – Has the contractor defaulted on any of its contracts within the last five years? If so, what were the circumstances?

Based on the results of the risk assessment, contract managers may decide whether it is advisable to contract for the services. If contracting, the contract manager will decide the level of scope, frequency, and methods of monitoring to be used to ensure oversight is sufficient given the risks involved. Risk assessment results may also be used to devise more stringent controls and tighter contract language, when appropriate, to adequately monitor the use of public funds.

It is also important to note that contract risk is dynamic. Therefore, the risk assessment should be updated periodically to provide a current record of risk factors associated with the contract.

Risk assessments, linked to a monitoring plan, should be documented. Contract managers may choose how to document this. Several examples of risk assessment tools can be found on OFM's Additional Contract Resources website at: <http://www.ofm.wa.gov/contracts/resources/default.asp>.

15.40.45.c

Transferring risk. Risk management strategies include transferring risk to the contractor, minimizing or mitigating the risk, eliminating the risk, or sharing the risk with the contractor. Contract managers may:

- Add clauses to the contract to address specific risk factors;
- Require contractors to provide proof of insurance;
- Develop and implement effective monitoring plans and contractor reporting requirements;
- Link payments to deliverables/performance measures; and/or
- Consider payment bonds or liquidated damages clauses.

15.40.50 Contract management principles

July 1, 2007

Contract managers must be mindful of the following:

- In almost all instances, written contracts must be signed by both parties before work can begin under the contract.
- Written contract amendments must be signed prior to the contract expiration date (end date) whenever there is a change to the scope of work, period of performance, or maximum dollar amount (or other financial terms) of the contract.
- When signing a contractor's contract form, provide appropriate review of the contract to ensure adequate protection for the State is included in the contract.
- Services should be performed to the satisfaction of the contract manager before payment is approved.
- All work must be completed within the contract period of performance, including deliverables.

15.40.55 Managing and monitoring contracts

July 26, 2009

15.40.55.a **Proactively manage and monitor.** Once the contract is fully executed by all parties, agency staff must proactively manage and monitor the contract to ensure the quality and quantity of services are received. Effective management and monitoring of personal service contracts are keys to successful contracting results.

15.40.55.b **Managing the contract.** Contract management includes any activity related to contracting for personal services, including the decision to contract, contractor screening, contractor selection, contract preparation, contract monitoring, auditing, and post-contract follow up.

While the contractor has responsibility to perform under the terms of the contract, the state agency has responsibility for reasonable and necessary monitoring of the contractor's performance to ensure compliance with the contract provisions.

Many contracts name a contract manager who serves as the primary point of communication between the agency and the contractor and who provides the principal contract management and monitoring function. More than one individual can be named as having responsibility for various aspects of the contract.

The chief objective of the contract manager, however, is to ensure that the contractor fulfills all contractual obligations in a quality manner within budget and schedule. To accomplish this task, the contract manager should be completely knowledgeable of the terms of the contract and maintain requisite controls throughout.

15.40.55.c

Monitoring the contract. Monitoring means any planned, ongoing or periodic activity that measures and ensures contractor compliance with the terms and conditions of the contract. The level of monitoring should be based on a risk assessment of the services provided and the contractor's ability to deliver those services. Every communication with a contractor is an opportunity to monitor activity.

The **purpose of monitoring** is to ensure the contractor is:

- Complying with the terms and conditions of the contract and applicable laws and regulations;
- Adhering to the project schedule and making appropriate progress toward the expected results and outcomes;
- Providing the quality of services expected; and
- Identifying and resolving potential problems and providing constructive, timely feedback.

Effective contract monitoring can assist in identifying and reducing fiscal or program risks early in the process, thus protecting public funds.

Monitoring activities may include, but are not limited to, the following:

- **Periodic contractor reporting.** Contractors submit progress reports or other appropriate data or deliverables to report on services being provided, adherence to the contract, and progress being made. Sub-standard performance can also be determined.

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- **On-site reviews and observations.** Contract managers may conduct on-site reviews, interview contractor staff to ascertain their understanding of program goals, review key systems and service documentation, review personnel records to ensure staff have appropriate credentials, review fiscal records, and observe operations whenever possible. The results of these reviews should be documented in writing and compared with contract requirements
- **Invoice reviews.** Comparing billings/invoices with contract terms ensures the costs being charged are accurate, consistent with the contract requirements, and within the compensation limits set by the contract. Also, verifying that funds are tracked by fund source will help prevent over-payments by fund.
- **Audit report reviews.** Contract managers review any required audit reports and audit work papers and ensure the contractor takes appropriate and timely corrective action, if required.
- **Other periodic contact with contractor.** Meetings and other periodic contact with the contractor to review progress facilitates continuous dialog and mitigates problems.

Documentation of monitoring activities must be maintained by the agency to verify that monitoring has been conducted. Contract files should include, for example, copies of letters and e-mail, meeting notes, and record of key phone conversations as evidence that conscientious monitoring has occurred during the contract. This is especially important where there are issues with the contractor's performance.

15.40.60

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Executing amendments to existing personal service contracts

As work progresses, it may be necessary to make changes to the contract to enhance or improve the deliverables or services. Any written alteration to an existing contract is called a contract amendment. Amendments are executed by all parties to document the changes being agreed upon.

Chapter 39.29 RCW establishes that personal services must be competitively procured, with few exceptions. Amendments are one of the exceptions and are not subject to competition. Agencies must, therefore, carefully analyze whether an amendment is the best approach for the additional services needed as compared to competitively procuring them.

Personal Service Contracts

15.40.60.a

Principle terms amended. The principle areas of contract changes that require amendments are:

- **Scope of work.** This may include adding, modifying or deleting tasks, services or deliverables, or revising specifications. Changes must be within the scope of the original contract.
- **Cost.** If the total amount of the contract is increased, a contract amendment is required. If the contract amount is decreased, it is advisable to execute an amendment to clarify the scope of work and dollar amount being decreased.
- **Period of performance.** An extension to the end date of the contract is the most common change to the period of performance.

Certain amendments are subject to filing with OFM and require a 10-working day waiting period and/or OFM approval before work under the amendment may begin. It is helpful to include an effective date and/or reference to the filing requirements in the amendment in order to be clear when services under the amendment are to begin.

Administrative amendments are those that result in minor changes to the contract. They do not materially affect the scope of work, do not change the total dollar amount, or do not change the period of performance.

Administrative amendments do not require a formal amendment, but are required to be documented in writing by the parties and retained in the contract file. Examples are address changes, staff name changes, budget line item adjustments that do not revise the total contract cost, deliverable due date changes within the period of performance, etc.

Administrative amendments are not required to be filed with or reported to OFM.

15.40.60.b

Within the scope of work. Changes to contracts may be awarded as amendments, rather than as new contracts, if the changes are **within** the general scope of work of the original contract. Work that would be considered within the general scope of the original contract is that which would be fairly and reasonably within the contemplation and intent of the parties when the contract was awarded.

If the amendment provides for services that are essentially the same as those in the original contract, the amendment would likely be within the general scope of the contract.

Personal Service Contracts

Changes that are outside the general scope of the contract are **not** appropriate to award through contract amendment. Such changes would have the effect of making the work performed substantially different from the work the parties bargained for at the time the original contract was awarded.

If a contract has expired, it is generally not appropriate to amend it; rather it is more appropriate to award a new contract.

15.40.60.c

Amendment is in the best interest of the state. The agency must determine that a proposed amendment is in the best interest of the state of Washington, considering such factors as project continuity, time savings, cost effectiveness, and the learning curve for a new contractor.

By their nature, contract amendments allow contractors to obtain additional work without having to compete. In view of the State's policy of open competition in the award of personal service contracts, agency staff must carefully and cautiously examine the nature, extent, and cost of the additional services and justify the decision to award an amendment in lieu of conducting a competitive process. The justification submitted to OFM as part of filing the amendment (if the amendment is subject to filing) satisfies this requirement. This does not apply to contracts that add time only and are not authorizing additional work or dollars.

When adding funding to a contract, agencies should generally include in the amendment both the dollar amount of the additional funding and the revised contract maximum (the amendment amount added to the current contract maximum). In addition, agencies should consider specifying what additional services are being provided under the amendment and include any new deliverable dates resulting from the additional dollars being authorized.

15.40.60.d

New contract option. If an amendment is not **clearly** determined to be the best choice, the agency must execute a new contract. A new contract is generally appropriate where there is a substantial change in the scope of work, duration, nature of work, or cost, or where there is a logical break in service. When awarding a new contract, competitive requirements must be followed, unless an exception or exemption applies.

15.40.60.e

Amendments to sole source and emergency contracts. Amendments to sole source and emergency contracts are appropriate only when the circumstances surrounding the original award still exist and, therefore, warrant continued use of sole source or emergency services.

15.40.65

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Corrective action

Contract problems must be addressed as soon as they are discovered to prevent them from becoming recurring or serious. Corrective action is suggested when direct negotiation and other less formal means have failed. Corrective action means action initiated by the agency and taken by the contractor that corrects identified deficiencies, produces recommended improvements, or demonstrates that deficiencies or findings are either invalid or do not warrant action.

Contract problems that warrant corrective action include:

- Failure to produce or submit key deliverables;
- Monitoring or audit findings;
- Poor quality of key deliverables;
- Inferior quality of services;
- Failure to perform all or part of the contract;
- Ongoing late performance;
- Inadequate, unclear or excessive billing; and
- Late submission of reports on a recurring basis.

A first step in corrective action would typically be to communicate in writing to the contractor describing where performance is deficient. Corrective action activities should be coordinated with the agency's management, in-house counsel and/or Assistant Attorney General, as applicable, to avoid waiving any rights that might be available to the State.

All corrective action initiated by the agency must be documented in writing. If the corrective action is successful in resolving problems, the contractor should be notified in writing that resolution has been achieved and the documentation retained in the contract file.

If corrective action is unsuccessful at first, state agency staff may continue to work with the contractor until deficiencies are resolved, or they may proceed with a dispute process or take other appropriate courses of action.

15.40.70

July 1, 2007

Contract disputes

A contract dispute is typically the result of a serious difference of opinion between the agency and contractor about contract terms, conditions or performance. The contract disputes process generally follows a corrective action process that has reached an impasse. The contract should contain a disputes clause setting forth the process to be followed. Invoking the disputes clause is an option available to either party, but is not required. If the dispute process is elected, the process must be followed as described in the contract.

Disputes provisions may take different approaches. One approach is for the disputing party to submit a written statement of the issues to the other party at a higher level within the organization. If that does not resolve the issue(s), a neutral third party can be appointed to review the position of both parties and submit a written decision. Another approach is to convene a dispute panel with each party to the contract appointing one member and a mutually agreed upon third panel member being appointed with the majority prevailing. Other appropriate disputes approaches may also be utilized, as agreed upon.

Dispute activities should be coordinated with the agency's Assistant Attorney General. Unless otherwise directed by the Office of the Attorney General, dispute processes are to precede any court action.

15.40.75

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Contract remedies and sanctions

After efforts to resolve issues through either or both the corrective action and/or dispute processes have failed, a contractor who is deemed to be noncompliant with the terms and conditions of the contract may be determined to be subject to remedies or sanctions, such as:

- Withholding payment;
- Collection of liquidated damages per the contract terms;
- Federal debarment or suspension of the right to contract with an agency or agencies, if federal funds are involved;
- Suspension of the contract; or
- Termination of the contract.

15.40.85 Contract termination

July 1, 2007

Contracts may be terminated prior to the completion date of the contract either for convenience of the parties or for cause as provided under the contract terms.

15.40.80.a

Termination for convenience. The termination for convenience clause is intended to handle changed conditions under the contract, particularly when the expectations of the parties have been subjected to substantial change.

Termination for lack of funding, referenced under the “Savings” clause of the model contract, is processed as a “Termination for Convenience.” It is intended to handle the situation when funding from federal, state or other sources is no longer available to the agency or not allocated for the purpose of meeting the agency’s contractual obligation.

The Attorney General's Office may be contacted when an agency is considering invoking the termination for convenience clause.

15.40.80.b

Termination for default. To terminate a contract based upon the contractor's default, the agency asserting default must demonstrate that the contractor has not performed according to the contract. This step follows the validated corrective action and/or disputes processes. By invoking the termination for default clause, the agency is generally in a position to claim damages due to the other party's breach of the contract. Again, either the agency’s in-house legal counsel or Assistant Attorney General should be consulted whenever an agency is considering invoking this clause.

15.40.85 Review and implement contractor’s final product

July 1, 2007

When the contract is almost complete, contract managers are responsible to:

- Assess whether all services have been provided and contract objectives and outcomes met;
- Determine the agency’s next steps based on the contractor’s work;
- Ensure contractor has accounted for any state property or equipment used for the contract, has turned in building access cards, etc.; and
- Ensure all invoices are received and authorize final payment, when appropriate, to the contractor.

15.40.85.a **Final written report.** As part of completing contract work under the terms of the contract, the contractor may be required to submit a final written report. Not all contracts will require such a report, but when they do, the final written product should address, at a minimum, the following areas as appropriate to the type of service provided:

- Statement of the problem investigated or need addressed;
- Description of the methodology used;
- Alternative solutions or approaches available;
- Selected solution or approach and reasons for selection;
- Benefits or results to be realized; Recommendations for further improvements; and/or
- Other matters that should receive management emphasis or attention.

Generally, the final report is submitted before final payment is made to the contractor.

15.40.85.b **Implementation.** Once a contractor's results or recommendations have been accepted, an agency is responsible to correct identified problems and/or to implement the recommendations, as appropriate. Follow-through by agency management on work done by the contractor is critical to the success of the overall project. The final written report should be thoroughly reviewed with the contractor to ensure that all conclusions, supporting logic, and related information are understood by the agency.

When the contractor's final report is accepted by an agency, the contract manager should determine the best approach to implement the recommendations. Factors to consider include:

- Which recommendations are to be implemented?
- What agency resources are required to proceed with implementation?
- Is staff sufficiently trained or prepared to proceed with any changes required?
- What tasks are required to implement each recommendation?
- Whose responsibility is it to complete each task?
- How and when will implementation be accomplished?

15.40.90

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Evaluate contractor's performance

Upon contract completion, the agency contract manager may want to prepare a contractor evaluation. This evaluation will be useful if agency management wants an analysis of consultant performance and if other agencies inquire about the consultant.

The evaluation may address the following:

- Timely completion of work;
- Quality of work performed;
- Quantity of work;
- Professional manner and conduct;
- Working relationship with agency staff; and/or
- Quality of project management.

Contract managers should share with other state agency staff information gained from administering the contract so that those responsible for future contracts can gain from these experiences.

15.40.95

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Documenting the contract file

Agencies are required to maintain adequate documentation regarding the contract and services provided by the contractor. Agencies may maintain contract documentation in more than one location as well as by multiple media. Contract payment documentation may be maintained in the fiscal office, while the contract manager may maintain a monitoring file in his/her location and the contract office may maintain the procurement files. The information may be available in electronic or hard copy format.

15.40.95.a

Documentation. Documentation in the contract file, at a minimum, must include the executed contract and all attachments and exhibits incorporated into the contract. Information related to a formal competitive procurement, as set forth in Subsection 15.20.30.n, must also be retained.

For informal competition, the documents stated in Subsection 15.20.20.d must be retained.

For sole source contracts of \$5,000 or more, an explanation of the basis for the sole source decision must be retained as well as documentation of the posting/advertisement.

The justification submitted to OFM as part of a sole source filing satisfies this requirement.

Monitoring activities conducted under the contract such as meeting minutes, copies of reports submitted, fund tracking records, etc., are all examples of the types of documentation that may be part of a contract file and must be maintained somewhere in the agency.

15.40.95.b

Records retention. Records retention of personal service contracts must follow the requirements published by the Office of the Secretary of State in the General Records Retention Schedule for Agencies of Washington State Government at: <http://www.secstate.wa.gov/archives/ga.aspx>.

15.40.98

July 1, 2007

Auditing contracts

15.40.98.a

Auditing. Auditing is broadly defined as the independent examination of an entity's records or actions in order to evaluate compliance with financial, legal, contractual, or policy requirements.

Several types of audits are performed, including:

- **State audits** – As with all expenditures made by agencies, personal service contract expenditures are subject to audit by the State Auditor's Office.
- **Federal audits** – When agencies award federally funded personal service contracts, the agency needs to determine whether the contract constituted a sub-recipient or vendor relationship with the contractor. If the contract constituted a sub-recipient relationship, an OMB Circular A-133 audit may be required of the sub-recipient. If the contract established a vendor relationship, in general, vendors are not required to have an OMB Circular A-133 audit. Determining whether a contractor is a vendor of the agency or an agency's sub-recipient can be difficult. Guidance is available in Subsection 50.30.60 and at: www.whitehouse.gov/omb/circulars/a133/a133.html.

Audits initiated by the agency or contractor: State agencies should use a risk assessment to consider whether an audit of the contractor is needed. When an audit is deemed appropriate and necessary, the expectations for the audit scope, methodology, and due date should be included in the written contract.

An audit can be designed to accomplish one or more of the following:

- Provide reasonable assurance as to the accuracy of the financial information reported by or obtained from the contractor;
- Assess the financial condition of a contractor;
- Assess the internal control system of a contractor;
- Assess the performance of a contractor; and
- Assess compliance with applicable laws and contract regulations.

While an audit can be an effective monitoring tool, it carries a cost. Therefore, care should be exercised in calling for audits. Regardless of whether an audit is performed, the agency still must monitor its contracts to ensure it receives the services for which it paid.

15.40.98.b **Audit resolution.** State agencies should evaluate appropriate resolution to the audits where findings and/or questioned costs have been identified. If federal funds are involved, OMB Circular A-133 Section 315 requires follow up and corrective action on all federal findings.

Normally, if a finding exists in a published audit report, whether issued by Federal auditors (Office of Inspector General), an independent audit firm, the State Auditor's Office, or a state agency's internal audit staff, resolution of audit findings is warranted.

15.40.98.c **Questioned costs.** Questioned costs are normally those costs identified as the result of an audit that may have inappropriately been paid to the contractor. The agency should investigate further and determine whether costs should be recovered.

Methods for recovering questioned costs may include:

- Billing the contractor;
- Adjusting future payments until the questioned costs have been recovered; and/or
- Deducting the questioned costs from the final payment.

There may also be good reasons not to pursue recovery of the questioned costs, such as when the costs to recover a small dollar amount are more than the over-payment. While this is an option, sufficient reasons, generally based on Assistant Attorney General guidance, are required to exercise this option.

Contracts using federal funds may require different processes, as prescribed by the federal government.

15.40.98.d

Performance audits. In 2005, Initiative 900 gave the State Auditor's Office authority to conduct performance audits of state and local governments. The State Auditor developed the following definition of a performance audit:

An objective and systematic assessment of the performance and management of an entity, program, activity, or function in order to:

- Provide information to improve performance and operations;
- Facilitate decision-making by parties with responsibility to oversee or initiate corrective action; and
- Improve accountability to the public.

Performance audits conducted will cover broad areas but will include those of the greatest public interest, matters that affect all agencies, and other identified recurring challenges.

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