

PERSONAL SERVICE AND CLIENT SERVICE CONTRACTING OVERVIEW

Legal Authority

The legal authority for personal service contracts and client services is contained in [Chapter 39.29 RCW](#).

Regulations for **personal services** are set forth in Chapter 15 of the *State Administrative and Accounting Manual* at the following site:
<http://www.ofm.wa.gov/policy/15.htm>.

Regulations for **client services** are set forth in Chapter 16 of the *State Administrative and Accounting Manual* at the following site:
<http://www.ofm.wa.gov/policy/16.htm>.

Defining Personal Services

Personal service contracts provide agencies professional or technical expertise to meet a variety of needs.

Personal services are professional or technical services provided by a consultant (contractor) to accomplish a specific study, project, task, or other work statement. Consultants, who provide personal services, serve state agencies as objective advisers by rendering professional opinions, judgments, or recommendations.

A consultant's services may include offering advice based on specialized knowledge, skills and experience, conducting studies, analyzing and evaluating technical issues, and/or providing advice and training to improve managerial and administrative operations. These services may assist an agency in setting policy and/or making decisions.

Personal services may range from fairly simple projects such as graphic design to complex and lengthy consulting engagements resulting in development and implementation of complex computer systems. [Click here for more examples of personal services.](#)

Contracts for personal services may be awarded to individuals, joint ventures, partnerships, corporations, or non-profit organizations. Agencies procure personal services from private businesses when they do not have the staff or the expertise necessary to perform the service or staff is not available to provide the service.

Generally, personal services are used to address a short-term need, resolve a problem, expedite a special project and/or to bring specialized skills for which the state is not permanently staffed. Infrequent and brief use of personal services demonstrates the independent nature of these contracts to the state.

However, while personal services are generally awarded for specific projects, they may also be awarded for on-going services of a professional or technical nature. The duration of the services does not determine the category of service, e.g., whether personal service or purchased service, rather the type of service is the primary factor to determine the appropriate categorization.

Consultants provide an independent, unbiased perspective on a problem. Agency management may find value in the service of a firm or individual who will not be influenced by internal factors and who may have a fresh and new viewpoint to contribute. Personal services are not always provided to or for the agency directly, but should relate to the mission of the agency.

Defining Client Services

Client services represent the bulk of the state's service contracts.

Client services are those 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 individuals who the agency has statutory responsibility to serve, protect or oversee. Clients are members of the public, external to state government, who have social, physical, medical, economic or educational needs. These individuals may require government assistance to meet their needs.

Clients include, but are not limited to, the following:

- Clients of the Department of Social and Health Services include nursing home patients, institutionalized individuals, and children in need of therapy;
- Clients of the Employment Security Department include unemployed, displaced workers and veterans;
- Clients of the Department of Health include children who need vaccinations;
- Clients of the Department of Veterans Affairs include disabled veterans and widows of veterans;
- Clients of the Department of Community, Trade and Economic Development include homeless individuals and crime victims; and

- Clients of the Office of the Superintendent of Public Instruction include K-12 public school students and their parents.
- Clients of institutions of higher education include their students.

The contractor must provide **direct** services to agency clients for the contracts to be classified as client service contracts. "Direct service" means the contractor is in direct contact with individual client as part of providing the client service.

Contracts for development of programs or media campaigns which will ultimately benefit the client, but which, under the contract scope, do not currently provide a direct service to the client, are not considered client service contracts. For example, development of a training curriculum that would ultimately be offered to clients is not a client service contract. The contract that provides the training to the client is the client service contract.

Planning for Client Services

In the initial stage of planning for client services, contract managers should define the need for the services. Defining the need contributes to effective prioritization of the funding required, a common understanding within the agency of the need, and the identification of the nature of the work and the level of services required to meet the need. Defining the need also contributes to the determination of how performance and quality will be measured.

Generally, state agencies responsible for client service delivery have a combination of both broad and specific authority to contract for these services. Contracting may also be mandated in the authorizing legislation for a specific program or service.

In deciding whether to contract for client services, the following may be considered:

- Does the state agency or program have the general or specific legal authority to contract for the services?
- Does the state agency have sufficiently qualified and available staff to provide the service to clients?
- Does the state agency have adequate resources to administer the contracting process throughout the contract cycle?
- Does contracting provide the greatest benefit to the state and/or the clients?
- Are qualified contractors available to provide the client service?
- Does contracting best serve the public interest?

One of the most important considerations to be addressed in deciding to contract is the availability of sufficient funding to cover the cost of services. The funding must also be appropriate for the type of client service involved. Adequate funding based on in-house budget projections must be verified by the contract manager. If funding

is inadequate or non-existent, a contract cannot be awarded.

When funding is available, the type of appropriation should be considered. For state agencies whose funds are appropriated for a fiscal year or biennial period, those funds cannot be disbursed for work performed in a subsequent period.

In addition to the identified costs associated with contracting for client services, contract managers should also consider overhead expenses, such as costs for staff involvement with contract development, contract management, monitoring and internal fiscal processes, training, legal review of the contract, and dispute resolution.

Types of State Procurement – Other Than Personal Services or Client Services

The state's purchasing authority is organized into eight major categories, one of which is personal services. The other seven categories are listed below:

It is important to correctly identify the type of procurement in order to follow the appropriate rules.

- Goods and Purchased Services (non-information technology)
- Information Technology Equipment and Services
- Public Works (including Engineering and Architecture)
- Highway Design and Construction
- Printing Services
- Insurance and Bonds
- Space/Buildings

For more information on other types of procurements,

http://www.ofm.wa.gov/contracts/resources/quick_reference_guide.pdf.

Goods and Purchased Services, [Chapter 43.19 RCW](#)

Procurement of many state goods and purchased services is the statutory responsibility of the Department of General Administration, Office of State Procurement (OSP) under Chapter 43.19 RCW and WAC 236-48 and 236-49. OSP oversees the purchasing and material control practices of all state agencies and serves as the purchasing agent for most agencies.

In addition, OSP issues the *Washington Purchasing Manual*, which contains both required procedures and guidelines that apply to the purchase of goods and purchased services. The document also delegates purchase authority of certain goods and services to agencies to make some of their own purchases, according to state procedures.

The *Washington Purchasing Manual* can be found at the following:

<http://www.ga.wa.gov/PCA/Manual.htm>

Refer to the Purchasing Manual for further information on competitive bidding for these goods and services. The current competitive thresholds are:

- Informal Competition - \$3,300 to \$46,200
- Formal Competition - \$46,201 +

These dollar thresholds are reevaluated each biennium, so it is advisable that you check the [Washington Purchasing Manual](#) prior to making a purchase under this authority.

In most instances the distinction between a "purchased" service or a "personal" service is clear. However, on occasion the service must be closely evaluated to make the determination.

Since the statutory requirements for procurement of purchased services are quite different from those for personal services, it is important to define the service accurately and early in the process.

Examples of purchased and personal services are given later in this section and a chart follows to assist in making the distinction.

It should also be noted that if a service is merely incidental to purchase of a good, the procurement is still to be processed as a commodity with the services included.

If a question still arises regarding the appropriate classification, contact either the Office of Financial Management (OFM), Contract Services Office, at (360) 725-5258, (360) 725-5259, (360) 725-5260, (360) 725-5257, (360) 725-5514, or the Department of General Administration, Office of State Procurement, at (360) 902-7400, for clarification.

Personal Service Characteristics	Purchased Service Characteristics
<ul style="list-style-type: none"> • Services are professional or technical in nature and meet more specialized needs. Work is predominantly intellectual and varied. • Work is independent from the day-to-day control of the agency; consultant maintains control of work methods. • Work requires regular exercise of judgment, discretion, and decision-making; involves providing advice, opinions, or recommendations; may have policy-implications for agency; often addresses management-level issues. • May require advanced or specialized knowledge, or expertise gained over an extensive period of time in a specialized field of experience. • Work may be original and creative in character in a recognized field of endeavor, the result of which may depend primarily on the individual's invention, imagination, or talent. • Consultant generally assumes risk of loss if the requirements are not satisfied. 	<ul style="list-style-type: none"> • Services are more repetitive, routine, or mechanical in nature; following established or standardized procedures as contrasted with customary and regular exercise of discretion or independent judgment. • Services contribute to the day-to-day business operations of the agency, rather than the management or policy side of the agency, and may meet more general needs. • Services generally involve completion of an assigned task, rather than an entire project. • Decision-making and analysis, if required, is more routine or perfunctory in nature. • Services that are generally performed based upon agency direction.
<p>NOTE: The fact that a service possesses one of the above characteristics is not necessarily conclusive to a determination of personal or purchased service, but rather the service should generally fit the applicable criteria.</p>	

Examples of Personal and Purchased Services:

The list below is a guide to assist agencies in determining whether a service is generally considered a personal service or a purchased service. Always carefully review the proposed services being required under the contract to make the final determination.

For example, a contract for conference coordination could be either personal or purchased service, depending upon the responsibilities of the contractor. If the contractor is independently responsible for organizing, implementing and coordinating the conference with only minimal guidance from the agency, the contract would be a personal service. If the contractor is following prescribed instructions and the agency has primary responsibility for coordination of the conference, the contract would be designated as a purchased service contract.

<i>Examples of OFM Personal Services</i>	<i>Examples of GA Purchased Services</i>
<ul style="list-style-type: none"> • Accounting services • Actuarial services • Analysis and assessment of processes, programs, fiscal impact, compliance, systems, etc. • Appraisal services • Art work, original (services creating the art work) • Audio/video media productions (design, development and/or oversight of) • Auditing services • Business analysis and assessment services • Business process re-engineering • Communications (including design, development, or oversight of audio/video productions, brochures, pamphlets, maps, signs, posters, annual reports, etc.) • Conference and trade show management and coordination • Consultation on programs, plans, projects, systems, etc. • Counseling employees • Curriculum development • Economic analysis and consultation • Environmental Planning/Technology/Studies (except when small part of an architectural/engineering contract) 	<ul style="list-style-type: none"> • Advertising in newspapers, magazines, billboards, etc. • Ambulance/emergency medical tech. service • Air/bus, vehicle charter/rental service • Auctioning service • Audiometric testing • Banking Services (routine, transaction based) • Boiler testing/water treatment service • Bookkeeping service (routine, transaction based) • Building alarm systems, service and repair • Check collection service • Clothing, textile fabrication repair service • Commercial laundry service, dry cleaning, etc. • Communications systems installation, servicing and repair • Conference Registration Assistance • Court reporting and transcription services • Credit card service • Debt collection service • Delivery/courier service • Document storage, duplication, retrieval, review and destruction service

<i>Examples of OFM Personal Services</i>	<i>Examples of GA Purchased Services</i>
<ul style="list-style-type: none"> • Evaluation of processes, programs, projects, systems, etc. • Executive recruitment • Expert witness services for litigation/testimony • Facilitation for groups, projects, retreats • Facilities planning/coordination • Feasibility studies (except when small part of an architectural/engineering contract) • Financial services • Fund raising • Grant writing • Graphic design (creative or original in nature) • Guest speakers (includes honoraria) • Investigations (personnel related, etc.) • Investment advisors and management • Labor negotiations and labor relations services • Legal and paralegal services Legislative liaison services • Lobbying services • Management consulting • Marketing services, including identifying market opportunities, conduct of marketing programs, planning, promotion, market research surveys, etc. • Mediation, negotiation and arbitration services • Medical and psychological services, including evaluation and consultative services (For blood draws, physicals, blood pressure checks, etc., see Health Screening under purchased services.) • Needs assessment (except when small part of an architectural/ engineering contract) • Operational assessments • Organization development 	<ul style="list-style-type: none"> • Drug testing and screening (standard tests) • Engraving service • Environmental monitoring: noise level, safety, hazardous gas detection, radiation monitoring service, etc. (using standardized processes) • Equipment installation, preventive maintenance, inspection, calibration and repair • Equipment rental services • Exam testing administration and scoring service • Firefighting/suppression service • Food preparation, vending and catering services • Health screening, basic diagnostic (wellness, blood pressure monitoring, blood draw, etc.) • Herbicide application service • Household goods packing, storage, transportation service • HVAC system maintenance service • Interpretive services: written/oral/sign language • Inventory service • Laboratory testing and analysis (standard tests only) • Land clearing/debris removal service (when not using heavy equipment) • Language translation service • Lay witness (called to testify in a court case) • Linen rental service • Marine equipment inspection, certification and repair • Medical equipment rental or repair service (wheel chairs, walkers, etc.) Includes measurements, adjustments and modifications to meet patient needs • Metal/pipe/wiring detection service • Office furnishings installation, refurbishment and repair service • Package inspection and crating • Painting service (unless public works)

<i>Examples of OFM Personal Services</i>	Examples of GA Purchased Services
<ul style="list-style-type: none"> • Outreach services for programs • Peer review • Planning services (except when small part of an architectural/ engineering contract) • Policy development and recommendations • Productivity improvement • Program development, assessment, implementation, coordination, evaluation, etc. • Public involvement services and strategies • Public relations services • Publication development (See Communications) • Quality assurance/quality control services • Recommendations on processes, products, projects, systems, etc. • Recruitment, executive • Research services – social, environmental, technical • Retreat and workshop planning, conduct, coordination • Scientific and related technical services • Strategic planning • Speech and report writing • Statistical analysis • Studies, development and conduct • Surveys (including development of instrument, conduct and analysis of results – if conduct only of standard survey instrument, would be purchased service) • Temporary employment service for professional services: architects, engineers, registered nurses, doctors, etc. • Trade development services • Training – when it is: (a) offered to specific categories or classes of employees; (b) offered to all or most agency employees six times or less in a fiscal year 	<ul style="list-style-type: none"> • Paper shredding • Parking lot sweeping/snow removal service • Pest/weed control service • Photographic/micrographic processing and delivering, includes aerial and ground photography (if analysis is included, then personal service) • Printing/duplicating service • Process serving • Property management (rent collection, property maintenance, etc.) • Recycling/disposal/litter pickup service • Security/armored car services • Shop welding/metal fabrication service • Steam cleaning, high pressure washing, parts cleaning service • Studio photography service (does not include portrait painting) • Subscription services • Telephone interview service (conduct of survey using prescribed survey instrument) • Temporary employment service (clerical support, dictation, word processing, bookkeeping, etc.) • Test fishing service • Towing service • Training – when it is offered on a recurring basis (more than six times per fiscal year) to all or most employees. Also includes existing satellite down-link courses and teleconferencing training services • Travel service – air, surface, water • Tree topping (when not using heavy equipment) • Utility services: garbage, fire protection, heat and sewer, cable TV, power, water, etc. • Vehicle inspection, lubricating and repair services • Videotaping and recording service • Warehouse dry/cold storage rental service • Weather information service

Information Technology Equipment and Services, [Chapter 43.105 RCW](#)

The Washington State Information Services Board (ISB) has the power and duty to develop standards governing the acquisition and disposition of equipment, proprietary software and purchased services, and confidentiality of computerized data.

The ISB also has the power and duty to purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services, or to delegate to other agencies and institutions of state government, under appropriate standards, the authority to purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services.

Agencies and institutions of state government are expressly prohibited from acquiring or disposing of equipment, proprietary software, and purchased services without such delegation of authority.

See <http://isb.wa.gov/policies/investment.aspx> for the documents referenced in this section.

For the latest information regarding competitive acquisition of IT goods and purchased services, see Appendix A of the *IT Investment Standards*, also located at this web site.

The ISB delegated certain duties and responsibilities to the Department of Information Services (DIS) related to the acquisition of IT resources. In addition, RCW 43.105.052 directs DIS to make available information services to state agencies and local governments and public benefit nonprofit corporations on a full cost-recovery basis. Under this authority, DIS may establish IT equipment and services and software master contracts for statewide use.

DIS also has statutory responsibility for telecommunications equipment, installation, answering and paging systems, and their corresponding service, and maintenance. These types of purchases are subject to the competitive requirements of Chapter 43.105 RCW and to ISB policy.

RCW 43.105.020 defines “purchased services” under the authority of the ISB and DIS to mean services provided by a vendor to accomplish routine, continuing, and necessary functions. This term includes, but is not limited to, services acquired for equipment maintenance and repair, operation of a physical plant, security, computer hardware and software installation and maintenance, telecommunications installation and maintenance, data entry, keypunch services, programming services, and computer time-sharing. See the chart at the end of this section for more examples.

Some IT purchases require ISB or DIS approval. Such approval must be obtained prior to release of any solicitation and prior to conducting the acquisition.

ISB approval is required under one or more of the following circumstances:

- The investment is placed under ISB oversight by legislative proviso.
- The ISB places the investment under its oversight.
- The investment was rated oversight level 3 or is part of a project that was rated oversight level 3, per the oversight matrix in the *ISB IT Investment Standards*.
- ISB approval may be required if the investment cost exceeds the agency director's delegated authority.

DIS approval is required under one or more of the following circumstances:

- The investment cost is more than the agency director's delegated authority.
- The acquisition process to be used is a technology assessment.
- The investment was rated oversight level 2 or is part of a project that was rated oversight level 2, per the oversight matrix in the *ISB IT Investment Standards*.
- The investment is exempted from delegated authority, even if the investment cost is within the agency director's delegated authority.

The *ISB IT Investment Policy* lists the types of IT investments that are exempted from delegated authority.

Section 903 of the 2007-09 Biennium Operating Budget requires that agencies consult with DIS on all information technology services and products provided by DIS. DIS provides services such as: computing, telecommunications, hardware and software purchases, and professional services master contracts. DIS also provides: internet and intranet services, web casting, video streaming, voice over IP, media purchasing, web design and hosting, video production, and security services.

If an information technology enterprise service is provided by DIS, or an agency has a specific requirement to acquire hardware, software, or purchased or personal services directly, the agency must consult with DIS first. A Section 903 consult with DIS is required regardless of the fund source or the funding amount. For more information, <http://dis.wa.gov/sect903/>.

When the acquisition is for IT personal services, in addition to complying with the *Information Technology Investment Policy*, the agency must procure the personal services in accordance with Chapter 39.29 RCW and when the contract is for

\$20,000 or more, file the contract with OFM.

The ISB policy sets the minimum procedural requirements for protests of all IT purchases. Therefore, IT solicitations for personal services should include the ISB protest language.

Some IT contracts may have elements of both “personal services” as defined in Chapter 39.29 RCW and “purchased services” as defined herein. In these situations, the agency should determine the primary purpose for the contract. If the contract’s primary purpose is determined to be for a personal service, then in addition to following the ISB rules, the agency must also follow the competitive procurement and filing requirements established by Chapter 39.29 RCW and SAAM Chapter 15.

If the primary purpose for the contract is determined to be for a purchased service, then follow the competitive requirements set forth by the ISB in the *Information Technology Investment Policy*.

In general, programming and related technical services are classified as IT “purchased services” when:

1. More established or standardized procedures are being followed or more routine, repetitive, or mechanical work is being accomplished.
2. Analysis and decision making are more general in nature and support of the project, rather than at a level that determines the course or direction of the project.
3. The work does not require rendering significant independent judgment.

When programming services are part of a project that is primarily for design or development of an information system, the contract is designated as a personal service and procured under Chapter 39.29 RCW.

Examples of IT services are listed at the end of this section to assist in determining whether services should be procured under the authority of Chapter 43.105 RCW as IT purchased services or pursuant to both authorities, Chapter 43.105 RCW and Chapter 39.29 RCW, as personal services.

Again, when referring to the following list of services, remember that the elements of the scope of work of the proposed contract must be examined to determine its appropriate designation. Do not focus exclusively on the title of the service.

Examples of IT Personal Service and IT Purchased Service

<i>Examples of IT Personal Services</i>	<i>Examples of IT Purchased Services</i>
<ul style="list-style-type: none"> • Feasibility studies • Needs assessment—including consultation with the user as to needs and requirements • Development of project definition and scope requirements • Business and technology planning • Acquisition planning and technology assessment • Project management • System development and implementation, integration and migration • Systems analysis, design, and implementation • System enhancements; adding new functionality to an existing system • Quality assurance services • Disaster recovery planning • System architecture (analysis and design of complex business and technology requirements) • Business process re-engineering • Performance assessment • Technical writing 	<ul style="list-style-type: none"> • Routine programming • Assisting with network operations and support • Technology support including: troubleshooting, basic analysis, desktop support, hardware and software technical support and production services support • Security services • Language and software conversion • Testing system and components • Hardware and software installation and maintenance • System application maintenance • Client server application maintenance • System or equipment maintenance and repair • Data entry services • Operation of a physical plant • Assistance with production turnover • Preparation or updating of system documentation and training materials • IT “commodity-like” services (buying a service that does not include hiring an individual to perform the service), including but not limited to digital certificates, long distance services, toll-free services, research and advisory subscription services, electronic payment services, encryption services and on-line training • IT Multimedia services, when supplied by or through DIS, including but not limited to video production, satellite broadcasting, video digitizing, web-casting • Internet programming services and website maintenance • Standard IT training related to hardware or software in use by an agency, such as Excel, Word, Network Administrator, System Administrator, Software Administrator, or COTS end user training when there has been limited or no modification to end user training materials.

Public Works, Including Engineering and Architectural Services, Chapters 28B.10.350, 39.04, 39.80 and 43.19.450 RCW

The term “public works” includes construction, repair or alteration of buildings or other real property and usually requires professional design and a building permit. [RCW 28B.10.050](#) states that when the estimated cost of such building, construction, renovation, remodeling, or demolition equals or exceeds the sum of \$25,000, the project is classified as a public works.

The Department of General Administration (GA), Division of Engineering and Architectural Services (E&A) is responsible for design and construction of all state-owned facilities, except those owned by the four-year universities, Department of Transportation and the natural resource agencies.

The Department of General Administration’s Division of Engineering and Architectural Services uses a competitive process referred to as consultant selection for award of engineering and architectural services. For projects estimated to be less than \$100,000 for basic services, a consultant selection committee makes a selection from firms on file. For larger projects, those \$100,000 for basic services or more, an advertisement is published in the Daily Journal of Commerce.

Selection of the architectural and/or engineering firm is based on qualifications of the firm. Once selection is made, negotiations begin to document the terms of agreement and to negotiate cost based on the state fee schedule.

The architect/engineer begins the project by developing the design and specifications and generally participates on the project through completion of construction.

Construction contracts are also procured through competitive bidding. For contracts under \$200,000, a small works roster may be used. For contracts of \$200,000 or more, the project is advertised, bid documents issued and public bid openings held. Award is made to the lowest cost, responsive, responsible bidder.

Engineering and architectural services fall under the broad definition of personal services; however, they are subject to the competitive and other requirements of [Chapter 39.80 RCW](#).

Although these services are exempt from competitive procurement and filing

requirements of the personal service contract statute, agencies are required per [RCW 39.80.070](#) to submit quarterly reports to OFM on any engineering and architectural agreements and addenda awarded during the quarter.

For more information on these contracts, contact the Department of General Administration, Division of Engineering and Architecture, at (360) 902-7272.

Highway Design and Construction, Chapters 39.80 and 47.28 RCW

Contracts for highway construction are subject to the statutory requirements of [Chapter 47.28 RCW](#) and for architectural and engineering (A/E) services, Chapter 39.80 RCW.

Contracts for architectural and engineering services are processed through the Consultant Selection Office in the Washington State Department of Transportation (WSDOT), Environmental and Engineering Service Center. Selection of the A/E firm is based on qualifications of the firm. Once selection is made, negotiations begin to document the terms of agreement and costs or fees are then negotiated.

For additional information on A/E contracts, contact the WSDOT Consultant Selection Office at (360) 705-7102.

Construction projects are also procured through competitive bidding. All contractors must be pre-qualified prior to bid submission. For contracts of \$100,000 or more, the project is advertised, bid documents issued and public bid openings held. Award is made to the lowest cost, responsive bidder. For information on construction contracts, contact the Pre-Contract Administration Manager at (360) 705-7017.

Competitive Contracting, Chapter 41.06.142 RCW

[RCW 41.06.142](#), passed as a part of the 2002 Personnel System Reform Act, permits state agencies to contract for services customarily and historically performed by classified state employees.

The Department of General Administration (GA) has developed rules (Chapter 236-51 WAC) and produced a *Washington State Competitive Contracting Manual* to assist state agencies in the competitive contracting process.

More information can be found at GA's website:
<http://www.ga.wa.gov/competitivecontracting/>.

Printing Services, Chapter 43.78 RCW

In general, the Department of Printing is the mandatory supplier for printing services. The agency produces a high volume of printed materials for state agencies with about 55 percent of its volume contracted out or bid to private industry.

Long-term contracts are maintained for printed forms and envelopes. For more information you may contact the State Printer at (360) 753-6820 or visit their website: <http://www.prt.wa.gov/>.

Insurance and Bonds, Chapter 43.41.300 RCW

Purchase of all insurance, bonds, and notary public commissions for state agencies is the responsibility of the Office of Financial Management, Risk Management Division. The Division issues a publication entitled, "Contracts: Transferring and Financing Risk," which assists in determining the amount of insurance required for contractors to carry out state projects. The publication is available on the Office of Financial Management (OFM) web page at: <http://www.ofm.wa.gov/rmd/risk/contrman.asp> or it can be ordered in hard-copy by calling (360) 902-7301.

They also answer specific or general questions on insurance requirements. The Risk Management Division conducts risk assessments to help agencies identify exposure areas and advises agencies on ways to reduce or eliminate claims.

Space/ Buildings

The purchase, lease, or rental of privately owned space and/or buildings on private property and alteration or repair is the responsibility of the Department of General Administration, Real Estate Division.
<http://www.ga.wa.gov/RES/RESservice.htm>

Ethics in Contracting

State employees involved in contracting need to be particularly aware of the specific ethics rules and prohibitions that apply to them.

[Chapter 42.52 RCW](#), "Ethics in Public Service," is designed to protect state employees from conflicts of interest or from engaging in activities where their interests or loyalties could be divided or may be questioned. Employees should familiarize themselves with the applicable statutes and all agency policies whenever they are involved in any purchases on behalf of the state.

Specific ethics prohibitions that can affect employees when contracting are:

- Having a personal or financial interest that is in conflict with the proper discharge of state duties, including the transaction of state business with an entity in which a state employee has an interest.
- Assisting other persons in transactions with the state when a matter has been under his/her official responsibility within the preceding two years or if the employee participated in that matter at any time.
- Disclosing confidential information for personal benefit or gain, or for the benefit or gain of others.
- Accepting employment that might reasonably require or induce the disclosure of confidential information obtained through state employment.
- Using one's official state position to obtain special privileges or exemptions or to grant special privileges to others.
- Accepting outside employment or compensation if circumstances would lead a reasonable person to believe it is a reward for performance or non-performance of state duties.
- Accepting any gift, if circumstances create the impression that one's vote, judgment, or action could be affected, or that staff are being rewarded for the performance or nonperformance of an official duty or if the item is not expressly made acceptable by [RCW 42.52.150\(4\)](#).

Separate ethics boards are established for the legislative and executive branches with authority to educate, render advisory opinions, investigate, conduct hearings, issue subpoenas, seek judicial enforcement of subpoenas, conduct hearings, impose penalties, and recommend suspension and dismissal of violators.

Agencies should contact their assistant attorney general or the appropriate ethics board for further information on the ethics law.

Contracting with Current or Former State Employees

Specific restrictions apply to contracting with current or former state employees. Agencies should familiarize themselves with the requirements of [Chapter 42.52 RCW](#) prior to entering into any type of contract. A brief summary of the restrictions follows and should be used as a guide. This summary is not a comprehensive explanation of all the requirements of the ethics law.

NOTE: These prohibitions apply to any type of service contracting with the state, not just personal service or client service contracts, and are applicable regardless of dollar amount.

Current State Employees

Current state employees may contract with outside entities or with other state agencies when all of the following conditions apply:

- The contract is bona fide and actually performed.
- The performance or administration of a contract or grant is not within the course of the officers' or employees' official duties, or under his/her official supervision.
- Applicable laws or rules governing outside employment for the state officer or state employee do not prohibit the performance of the contract or grant.
- The contract or grant is not performed for or compensated by any person from whom the officer or employee is prohibited from accepting a gift.
- The contract or grant is not expressly created or authorized by the officer or employee in his/her official capacity.
- The contract or grant would not require unauthorized disclosure of confidential information.

Ethics Board Approval

If a current state employee enters into a contract with a state agency regardless of the dollar amount and the contract is competitively bid and the only bid received is from the state employee; or, if the contract is not competitively bid, the state employee must receive the prior approval of the appropriate ethics board prior to execution of the contract. The approval requirement is applicable to current state employees, whether full-time, part-time or temporary. If approved, the state employee must file the contract with the Board within 30 days of contract approval. Certain exceptions apply to these requirements and are included in [WAC 292-110-060](#).

OFM will not process this type of contract filing with a state employee until the approval from the appropriate ethics board has been received.

Former State Employees

Contract Restriction.

A former state employee may not accept employment or compensation from an employer within one year of leaving state employment if:

- For two years prior to leaving the state the employee negotiated or administered one or more state contracts with the prospective employer.
- The value of the contract or contracts was more than \$10,000.
- Duties for the new employer include implementing or fulfilling contracts negotiated or administered while a state employee.

Two-Year or Beneficial Interest Restriction.

Under this provision, a former state officer or state employee may not, within a period of two years following the termination of state employment, have a direct or indirect beneficial interest in a contract or grant that was expressly authorized or funded by specific legislative or executive action in which the former state officer or state employee participated.

This restriction does not prohibit a former state officer or state employee from doing business with his or her former state agency for a period of two years.

Continuing Restriction.

Several of the post-state employment restrictions are continuing. That is, there is no statutorily defined time limit that determines when these restrictions end.

There are continuing restrictions on the following activities by former state officers and state employees:

- Accepting an offer of post-state employment or receiving compensation from a post-state employer if the officer or employee knows or has reason to believe the offer of employment or compensation was intended, in whole or in part, directly or indirectly, to influence the officer or employee or as compensation or reward for the performance or nonperformance of a duty by the officer or employee during state employment.
- Accepting an offer of post-state employment or receiving compensation from a post-state employer if circumstances would lead a reasonable person to believe the offer has been made, or compensation given, for the purpose of influencing the performance or non-performance of a duty by the officer or employee during state employment.
- Participating, at any time subsequent to state employment, whether or not

for compensation, in any transaction involving the state in which the former state officer or state employee at any time participated during state employment.

Independent Status of Contractor

An essential criterion in the use of personal services is the independent entrepreneurial relationship between the contractor and the agency. Agencies could potentially be subject to payment of fines by the Internal Revenue Service and the Social Security Administration, if a determination of "employee" status is made regarding the agency's contracts.

Federal regulations essentially convey that every individual is an employee, if under the usual common law rules the relationship between the individual and the person for whom services are performed is the legal relationship of employee/employer.

To determine whether a worker is an independent contractor or an employee, one must examine the relationship between the worker and the state. Existence of a contract alone will not determine the status of the parties. The actions of the parties will control. All evidence of control and independence in this relationship should be considered.

The facts that provide this evidence fall into three primary categories – Behavioral Control, Financial Control, and the Type of Relationship itself.

Behavioral Control covers facts that show whether the state has a right to direct and control how the work is done, through instructions, training, or other means.

Financial Control covers facts that show whether the state has a right to control the business aspects of the worker's job. This includes, but is not limited to:

- The extent the worker has un-reimbursed business expenses.
- The extent of the worker's investment in the business.
- The extent the worker makes services available to the relevant market.
- How the business pays the worker.
- The extent the worker can realize a profit or incur a loss.

Facts covered by ***Type of Relationship*** include, but are not limited to:

- Written contracts describing the relationship the parties intended to create.

- The extent the worker is available to perform service for other similar businesses.
- Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay.
- The permanency of the relationship.

After consulting with your own agency staff, contract managers may want to consider consulting with the Office of the Attorney General or the OFM Accounting Division to ensure their determination is made correctly. This is a complex area in which multiple federal and state agencies have some type of oversight so consider your decisions carefully.

Contractor's Washington Business License

Contractors doing business in Washington State should obtain a Washington State business license.

As a prerequisite to doing business within Washington State, a business enterprise, whether an individual, partnership or corporation, must obtain a Washington business license, with few exceptions. Washington has a convenient, one-stop system that provides for ease of registration through a master application. The master application may be obtained and returned to one of several Unified Business Identifier (UBI) service locations around the state. Potential contractors can check their local phone books for the Washington State listings for the Departments of Revenue, Labor and Industries, and Employment Security in their area or contact the Department of Licensing's Master License Service office in Olympia:

Department of Licensing
Master License Service
405 Black Lake Boulevard, Bldg. 2
PO Box 9034
Olympia, WA 98507-0934
Telephone: (360) 664-1400

Additional information about the master application may be obtained through the Department of Licensing's Internet site: <http://www.dol.wa.gov/business/>. Upon completion of the master application, the business is assigned a Unified Business Identifier (UBI) number. The UBI number is a nine-digit number that is assigned to the business and identifies the state tax registration number; the industrial and unemployment insurance accounts (if the business hires employees); the corporate, limited partnership, limited liability company or limited liability partnership registration issued by the Office of the Secretary of State; and the business trade name registration.

In general, any person acting in an independent capacity to perform personal services in this state must have a UBI number before conducting any work. Businesses so registered are required to pay business and occupation (B&O) taxes based on revenue generated as a result of performance of such services, when their revenue exceeds \$24,000 per year.

Exceptions to this rule exist. Out-of-state contractors do not require a business license when the services are provided entirely outside of Washington State. For other exceptions or clarification regarding the requirements for B&O taxes, contact the Washington State Department of Revenue at (800) 647-7706. Agency contract managers should not provide tax advice.

Using State Certified Minority and Women Owned Firms

See [OFM Policy 15.10.50](#) for key information related to the Office of Minority and Women's Business Enterprises (OMWBE) and their participation goals.

OMWBE goals may be established for individual competitive procurements, but the procurement document must state that the goals for minority business enterprises (MBE) and/or women's business enterprises (WBE) participation are voluntary. No preferences for MBE and/or WBE participation may be included in scoring of the proposals, no minimum level of MWBE participation may be required as a condition for receiving an award, and proposals will not be rejected or considered non-responsive for not including MWBE participation.

While the goals are voluntary for state agencies, achievement of the goals is encouraged. When goals are included in the solicitation document, consultants are to include in their proposals the names of any minority and/or women owned firms they plan to involve. Only firms that are certified by OMWBE will count toward the goals. Proposals should also include the percentage or dollar value of the work and a description of the services the MBE and/or WBE firm(s) will be providing.

Contract specifications may provide that the contractor report the MBE and WBE participation to the awarding agency indicating the amount paid to the firm(s) and the nature of the services performed. Agencies, in turn, report payments made to the certified firms through either the on-line Agency Financial Reporting System or through their own electronic medium in a format approved by OMWBE.

Failure to comply with MBE and WBE contract provisions, if any, may result in termination of the contract.