Contents

Getting Started i

CHAPTER 1 – Contracting Overview 1-1

1.1 Procurement Authority 1-1

1.2 Competitive Procurement – When You Need It, When You Don't 1-1

1.3 Defining Personal Services 1-2

1.4 Negotiated Procurement 1-3

1.5 Other Types of State Procurements 1-4

1.5.1 Goods and Purchased Services, Chapter 43.19 RCW 1-4

1.5.2 Information Technology Equipment and Services, Chapter 43.105 RCW 1-8

1.5.3 Public Works, RCW 28B.10.350, 39.04, 39.80 and 43.19.450 1-11

1.5.4 Highway Design and Construction, Chapters 39.80 and 47.28 RCW 1-13

1.5.5 Printing Services, Chapter 43.78 RCW 1-13

1.5.6 Insurance and Bonds, RCW 43.19.1935 1-13

1.5.7 Space/Buildings 1-14

1.6 Standards of Ethics and Conduct 1-14

1.7 Contracting with Current or Former State Employees 1-15

1.8 Training on Personal Service Contracts 1-17

1.9 Risk-Based Audits 1-18

1.10 Audit and Investigative Findings 1-18

1.11 Frequently Asked Questions and Answers 1-18

CHAPTER 2 – Planning and Preparation 2-1

2.1 Careful Planning and Documentation is Key 2-1

2.2 Define Your Needs 2-1

2.3 Risk Assessment Approach to Contracting 2-2

2.4 Get Management Support 2-5

2.5 Why Use a Consultant? 2-5

2.6 Cost/Benefit Analysis 2-6

2.7 Available Funding 2-7

2.8 Available Public Resources 2-8

2.9 Legal Constraints to Contracting 2-8

2.10 Access to Data 2-9

2.11 Merit System Alternatives to Contracting 2-9

2.12 Using State Certified Minority and Women-Owned Firms.....2-10
2.13 Independent Status of a Contractor ... ……...2-11
2.14 Performance Measures and Outcomes 2-13
2.15 Master Personal Service Contracts.....2-14

CHAPTER 3 – Locating Consultants.....3-1
3.1 Sources 3-1
3.2 Large Firms Versus Small Firms.....3-1
3.3 Advertising and Sample Legal Notice 3-2
3.4 Contractor's Washington Business License.....3-7

CHAPTER 4 – Filing Requirements for Personal Service Contracts.....4-1
4.1 What Is a Contract Filing?.....4-1
4.1.1 Accessing the PSCD 4-2
4.1.2 Copy of the Contract or Amendment 4-2
4.1.3 Documented Justification.....4-3
4.2 General Filing Information.....4-3
4.2.1 Filing Periods.....4-3
4.2.2 OFM Processing of Filings.....4-6
4.2.3 Filings for Higher Education.....4-7
4.2.4 Contract Amendments.....4-8
4.2.5 Contract Total 4-9
4.2.6 Late Filings 4-9
4.2.7 Failure to File.....4-10
4.3 Which Contracts and Amendments Must be Filed? 4-10
4.3.1 Filing Sole Source Contracts and Amendments 4-10
4.3.1.1 Advertising a Sole Source Contract and a Sample Sole Source Legal Notice 4-12
4.3.1.2 Filing a Sole Source Contract or Amendment.....4-15
4.3.1.3 Sole Source Filing Justification 4-16
4.3.2 Filing Competitively Solicited Contracts/Amendments of $20,000 or more ...4-19

4.3.3 Contract Amendments Cumulatively Exceeding 50 Percent of the Original Contract Value and/or That Substantially Change the Scope of Work of the Original Contract 4-23
4.3.3.1 Filing an Amendment that Exceeds 50 Percent of the Original Contract Value and/or That Substantially Changes the Scope of Work of the Original Contract 4-25
4.3.3.2 Filing Justification 4-25
4.3.4 Emergency Contracts 4-26
4.3.4.1 Emergency Contract Filing Justification 4-27
4.4 OFM Response to Filings 4-28
4.5 Late Filing 4-29
4.6 Reporting of Unfiled Personal Service Contracts 4-30
4.7 Annual Contract Procedures Report 4-32
4.8 Quarterly Report on Architectural/Engineering Services 4-33
4.9 Exemptions from Competition and Filing Requirements 4-33
4.9.1 Contracts Totaling Less Than $5,000 4-34
4.9.2 Contracts Subject to Tariff 4-34
4.9.3 Intergovernmental Agreements 4-34
4.9.4 Services for a Standard Fee 4-35
4.9.5 Collaborative Research 4-35
4.9.6 Client Services 4-36
4.9.7 Architectural and Engineering Services 4-38
4.9.8 Expert Witness Contracts 4-38
4.9.9 Bank Supervisory Agreements 4-38
4.9.10 Interpreter Services 4-39
4.9.11 Exemptions by the Director of the Office of Financial Management 4-39
4.10 Civil Penalty 4-40
4.11 Filing Charts 4-40

CHAPTER 5 – Competitive Procurement Methods 5-1
5.1 Overview of Competitive Methods 5-1
5.2 Number of Consultants to Solicit 5-3
5.3 Informal Competition-Evidence of Competition/Letter to Request Bids 5-4

5.4 Formal Competition – Request for Proposal/Request for Qualifications and Quotations 5-8
5.4.1 Advertisement Required 5-8
5.4.2 Issue Formal Solicitation Document 5-8
5.4.3 Elements of an RFP 5-9
5.4.4 Typical RFP Schedule 5-12
5.4.5 Proposal Preparation and Submission Instructions 5-14
5.4.6 Timeline for Responses 5-16
5.4.7 Evaluation Criteria 5-17
5.5 Another Type of Formal Procurement Document 5-18
5.6 Competitive Solicitation–Variation 5-18
5.7 Unsolicited Proposals 5-19

CHAPTER 6 – Consultant Selection 6-1
6.1 Narrowing the Field, Then Making Your Choice 6-1
6.2 Proposal Evaluation Document 6-1
6.3 Selecting the Evaluation Team 6-3
6.4 Communicating with Consultants 6-5
6.5 Pre-Proposal Conference 6-5
6.6 Receipt and Opening of Proposals 6-6
6.7 Late Proposals 6-7
6.8 Responsiveness of Proposals 6-7
6.9 Evaluating and Scoring the Proposals 6-10
6.9.1 Study the Criteria 6-11
6.9.2 Explain the Ratings 6-11
6.9.3 Independent Evaluation 6-11
6.9.4 Consensus 6-11
6.10 Blind Evaluation 6-11
6.11 Reference Checks 6-12
6.12 Oral Presentations 6-13
6.13 Determining the Apparent Successful Contractor 6-13
6.14 Documenting the Selection 6-14
6.15 Debriefing Conferences 6-14
6.16 Public Disclosure 6-15
6.17 Protest of the Procurement 6-15

CHAPTER 7 – Formalizing the Contract 7-1
7.1 Contract Negotiations 7-1
7.2 Draft Contract 7-2
7.3 General Terms and Conditions 7-2
7.4 Special Terms and Conditions 7-3
7.4.1 Identification of the Parties 7-3
7.4.2 Scope of Work 7-3
7.4.3 Period of Performance 7-4
7.4.4 Compensation and Payment 7-5
7.4.5 Fiscal Reporting 7-6
7.4.6 Payment Documentation 7-6
7.4.7 Signatures of Responsible Parties 7-7
7.5 Explanation of Other Contract Terms and Conditions 7-7
7.6 Approval as to Form 7-11
7.7 Performance Bonds 7-11
7.8 Liability Insurance 7-12
7.9 Industrial Insurance Coverage 7-13
7.10 Fiscal Considerations 7-14
7.11 Contract Payment Terms 7-15
7.12 Security for Performance 7-18
7.13 Contract Execution 7-18

CHAPTER 8 – Managing/Monitoring the Contract 8-1
8.1 Responsibilities of the Contract Manager 8-1
8.1.1 State Agency Staff Qualifications 8-2
8.1.2 Contract Manager “Don’ts” 8-2
8.2 Monitoring Contract Performance 8-3
8.2.1 Purpose 8-3
8.2.2 Monitoring Plan 8-5
8.2.3 Monitoring Activities 8-5
8.3 Reviewing Invoices for Payment 8-7
8.4 Corrective Action 8-8
8.5 New Contract or Amendment? 8-10
8.6 Processing Contract Amendments 8-12
8.7 Contract Disputes 8-13

8.8 Contract Termination....8-13
8.8.1 Termination for Convenience....8-13
8.8.2 Termination for Default....8-14
8.9 Remedies and Sanctions....8-14
8.10 Suspected Criminal Activity....8-15
8.11 Review and Implement Contractor's Final Product....8-16
8.12 Evaluate Contractor's Performance....8-17
8.13 Audit....8-18

APPENDIX A – Chapter 39.29 RCW.... A-1

APPENDIX B – Sample Interagency Agreement.... B-1

APPENDIX C – Sample Request for Proposals.... C-1

APPENDIX D – Sample Evaluation Scoring Sheet.... D-1

APPENDIX E – Sample Personal Service Contract.... E-1

APPENDIX F – Contract Checklist Form and Table....F-1

Getting Started

The Guide identifies both the rules and best practices related to personal service contracting. Close adherence will ensure better contracting results for your agency.

The *Guide to Personal Service Contracting* is provided to explain personal service contracting as defined under Chapter 39.29 RCW and in the *State Administrative and Accounting Manual*, Chapter 15. The booklet is designed to identify both the rules that apply to personal service contracts, as set forth in statute and policy, as well as to describe best contracting practices. The Guide is written in a directive style when a requirement is being explained, and a non-directive style when a best practice is being described. Senate Bill 5629, passed by the 2002 Legislature, requires adherence to the guidelines, effective January 1, 2003. Therefore, any deviation from the processes described in the *Guide* should be well documented.

This manual will help you apply the contracting process to best advantage when planning, soliciting, awarding and managing personal service contracts. By following these legal guidelines and generally accepted contracting principles, you and your agency will achieve better results and ensure against the unfortunate legal and technical pitfalls awaiting the unwary contracting manager. In addition, the Washington State Legislature has mandated contract training for those who manage or execute personal service contracts. This further emphasizes the importance of contract management in accomplishing the agencies' goals and best serving the needs of the State.

Change is an ongoing and necessary element in government contracting, and new legislation can significantly impact procurement decisions. For that reason, it is imperative that state government managers and staff keep abreast of changing requirements. This manual will assist in that effort. Please recognize as well that the *Guide* is not intended to establish, or to alter, the legal requirements governing personal service contracting or to create legal rights or claims based on its content.

This edition of the *Guide to Personal Service Contracting* supersedes the manual of the same title dated September 2002.
The *Guide* is located electronically on the Office of Financial Management (OFM) website at the following address: http://www.ofm.wa.gov/psc/contracts.htm. Few hard copies are available to agencies as it is preferred that agencies use the on-line version, since it will be kept current.

CHAPTER 1

Contracting Overview

This section describes the basic approach to, and the key elements of, the personal services contracting process.

1.1 Procurement Authority

The legal authority for personal service contracts is contained in Chapter 39.29 RCW (see Appendix A). Regulations for implementation 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

1.2 Competitive Procurement – When You Need It, When You Don't

*Washington State's public policy **strongly** favors competition.*

It is always advisable to use the competitive procurement process for personal services. Competitive bidding is a powerful tool for garnering the highest quality professional service from consultants at the most reasonable price. Competition is required for personal service contracts of $5,000 or more, but in keeping with the state's public policy favoring competition, use of limited competition is recommended for contracts less than $5,000 when feasible. You are well advised to use competitive procurement. Here's why:

Increased Participation – A competitive process provides a greater number of firms an opportunity to submit proposals/offers to the state and encourages qualified firms to participate.

Lower Prices – Full and open competition reduces costs since prospective contractors submit their best offers to obtain contracts.

Higher Quality – Consultants who develop proposals in a competitive environment pull together the strongest management and technical teams available.

Innovation – Issuing solicitations to a number of consultants provides the opportunity to select from the most qualified and skilled talent available in the marketplace. An agency may find a consultant's alternative approach to solving a problem more effective than that initially envisioned by staff.

Avoid Favoritism – Unfounded or not, accusations of favoritism can hurt your agency and mar its reputation. Conducting a fair and open competitive process will help avoid any such claims.

Avoid Unsavory Publicity – Even the best-prepared contracts can go awry. When they do, you are in a more defensible position when you have competitively bid your project.

1.3 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.

Personal services can be professional or technical in nature. The services are performed for state agencies by independent consultants whose occupation is the rendering of services such as: accounting, marketing, finance, engineering, architecture, legal services, auditing, organizational development, management services, medical and health services, strategic planning, research and environmental technology. These examples and more are listed in Section 1.5.

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.

Contracts for personal services may be awarded to individuals, joint ventures, partnerships, corporations, or non-profit organizations. Consultants may 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. The agency does not have direct supervisory or managerial control over the day-to-day activities of the consultant providing the service.

Agencies often procure personal services from private sources or other public agencies 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.

1.4 Negotiated Procurement

Competitive procurement of personal services involves evaluation of proposals based on multiple factors, rather than relying on price as the determinant factor. Agencies determine the weighted value of evaluation criteria 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 selecting the lowest cost, responsive bidder.

Personal services are often more subjective in nature and, therefore, more difficult to specify than services or products procured through a sealed bid process. Intangible properties such as human effort and impartial advice may not be evaluated in the same way as supplies or equipment. Evaluation criteria for personal service procurements may include quality, reputation, experience and technical capabilities among the evaluation criteria. Cost or price is an element in evaluation but the selection need not be driven solely by price. The solicitation document must clearly set forth the evaluation criteria.

1.5 Other Types of State Procurements

The state's purchasing authority is organized into eight major categories, one of which is personal services. The other seven categories are listed below and explained further in the following sections.

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

1.5.1 Goods and Purchased Services, Chapter 43.19 RCW

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

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 that 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 (found at the following site: www.ga.wa.gov/pca/regulat.htm.)

Refer to the Purchasing Manual for further information on competitive bidding for these goods and services. At the time of issuance of this Guide, the competitive thresholds are:

- Informal Competition - $3,000 to $42,300
- Formal Competition - $42,301 +

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 Office, at (360) 725-5260, (360) 725-5259, or (360) 725-5258, or the Department of General Administration, Office of State Procurement, at (360) 902-7400 for clarification.

DISTINCTIONS BETWEEN PERSONAL & PURCHASED SERVICES

Personal Service Characteristics	Purchased Service Characteristics
• 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.	• 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 of the agency. • Services generally involving 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.
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.	

EXAMPLES OF PERSONAL & 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.

Examples of OFM Personal Services	Examples of GA Purchased Services
Accounting services	Advertising in newspapers, magazines, billboards, etc.
Actuarial services	Ambulance/emergency medical tech. service
Analysis and assessment of processes, programs, fiscal impact, compliance, systems, etc.	Air/bus, vehicle charter/rental service
Appraisal services	Auctioning service
Art work, original (services creating the art work)	Audiometric testing
Audio/video media productions (design, development and/or oversight of)	Banking Services (routine, transaction based)
Auditing services	Boiler testing/water treatment service
Business analysis and assessment services	Bookkeeping service (routine, transaction based)
Business process re-engineering	Building alarm systems, service and repair
Communications (including design, development or oversight of audio/video productions, brochures, pamphlets, maps, signs, posters, annual reports, etc.)	Check collection service
Conference and trade show management and coordination	Clothing, textile fabrication repair service
Consultation on programs, plans, projects, systems, etc.	Commercial laundry service, dry cleaning, etc.
Counseling employees	Communications systems installation, servicing and repair
Curriculum development	Conference Registration Assistance
Economic analysis and consultation	Court reporting and transcription services
Environmental Planning/Technology/Studies (except when part of an architectural/engineering project)	Credit card service
Evaluation of processes, programs, projects, systems, etc.	Debt collection service
Executive recruitment	Delivery/courier service
Expert witness services for litigation/testimony	Document storage, duplication, retrieval, review and destruction service
	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

Examples of OFM Personal Services	Examples of GA Purchased Services
Facilitation for groups, projects, retreats Facilities planning/coordination Feasibility studies (except when part of an architectural/engineering project) 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 part of an architectural/engineering project) Operational assessments Organization development Outreach services for programs Peer review Planning services (except when part of an architectural/engineering project) 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, etc. Retreat and workshop planning, conduct, coordination, etc. Scientific and related technical services Strategic planning Speech and report writing Statistical analysis Studies, development and conduct	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 Janitorial service, carpet cleaning, window washing Laboratory testing and analysis (standard tests only) Land clearing/debris removal service (when not using heavy equipment) Landscaping--tree planting, grooming service, lawn mowing (except when part of an architectural/engineering project) 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) 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)

Examples of OFM Personal Services	Examples of GA Purchased Services
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	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

1.5.2 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. It 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://www.wa.gov/dis/portfolio 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, 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 Investment Policy lists the types of IT investments that are exempted from delegated authority.

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 set forth in this booklet. 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, then 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 Services	Examples of IT Purchased Services
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 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	Routine programming Assisting with network operations and support Technology support including: troubleshooting, basic analysis, 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 or equipment maintenance and repair Data entry services Operation of a physical plant Assistance with production turnover 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, webcasting. Internet programming services and website maintenance Standard IT training related to hardware or software in use by an agency.

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

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.10.50 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.

Engineering and architectural services procured by GA/E&A use a competitive process referred to as consultant selection. 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.

1.5.4 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 Department of Transportation, 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 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.

1.5.5 Printing Services, Chapter 43.78 RCW

In general, the Department of Printing is the mandatory supplier for printing services. It 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.

1.5.6 Insurance and Bonds, RCW 43.19.1935

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 manual is available on the Office of Financial Management (OFM) web page at http://www.ofm.wa.gov/rmd/risk.htm or can be ordered in hard copy by calling (360) 902-7301.

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

1.5.7 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. For further information, you may call (360) 902-7373.

1.6 Standards of Ethics and Conduct

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. Chapter 42.52 RCW, "Ethics in Public Service," effective January 1, 1995, applies to all state employees in all branches of state government.

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

The ethics law 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 within his/her official responsibility within the preceding two years.

- Disclosing confidential information, for personal benefit or gain, or for the benefit or gain of others.
- Accepting employment that might reasonably require 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 of a value that exceeds statutory limits.

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.

1.7 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 contracts. 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 contracting.

Current State Employees

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

1. The contract is bona fide and actually performed.
2. The performance or administration of a contract or grant is not within the course of the officer's or employee's official duties, or under his/her official supervision.
3. The performance of the contract or grant is not prohibited by applicable laws or rules governing outside employment for the state officer or state employee.
4. 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.
5. The contract or grant is not expressly created or authorized by the officer or employee in his/her official capacity.
6. The contract or grant would not require unauthorized disclosure of confidential information.

Ethics Board Determination

If a current state employee enters into a contract with a state agency 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. If approved, the state employee must file the contract with the board within 30 days of contract approval.

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

One-Year 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 one or more state contracts with the prospective employer; the value of the contract or contracts was more than $10,000; and, duties for the new employer include implementing or fulfilling contracts

negotiated or administered while a state employee.

Two-Year Restriction: A former state employee may not have a beneficial interest in a contract that was expressly authorized or funded by executive action in which the employee participated. (A beneficial interest is the right to enjoy profit, benefit or advantage from a contract.)

Continuing Restriction: A former state employee has a continuing post-state employment restriction prohibiting him or her from assisting others in any transaction with the state if he or she participated in the transaction while a state employee.

1.8 Training on Personal Service Contracts

Contract training is mandatory before an employee manages or executes a personal service contract.

Training on personal service contracts is required for those who execute or manage personal service contracts. Those who have not completed contract training cannot execute or manage these contracts until they have completed the training. Based on legislative concerns about the State's contracting practices, the 2002 Washington State Legislature passed Senate Bill 5629 that mandated the contract training requirement effective January 1, 2004.

The OFM Contract Office offers ongoing and special contract training classes in order that staff can meet these requirements. The class schedule for each quarter is available online at http://swfs.ofm.wa.gov/swt/schedule.asp#Contracts. For information regarding an agency-specific class, call (360) 725-5259 or email OFM.Contracting@ofm.wa.gov.

The OFM training covers the topics in this *Guide to Personal Service Contracting*. Those who have taken OFM's half-day or full-day personal service contract training since July 1999 have satisfied the requirement. OFM has records of those who attended training since that date.

Staff who execute contracts are those who sign contracts. Staff who manage contracts are those who have responsibility for the day-to-day activities involved in contracting. These activities may include providing technical assistance to contractors, monitoring contractor activities, and reviewing and approving invoices. Managers who execute but don't manage contracts may satisfy this requirement by attending the Contracting for Mid-Level Managers training or the Contract Training for the Executive Manager offered by OFM or equivalent training

approved in writing by OFM.

Agencies may provide their own personal service contract training and are encouraged to do so. However, the course must be approved in writing in advance by OFM. If agencies provide training, names of staff who attended the training must be reported to OFM.

Any request for an employee to be exempt from this training requirement must be submitted to OFM in writing. OFM must grant approval to the agency prior to the employee executing or managing contracts. The exemption is to be considered a temporary waiver only for an individual. The employee granted the exemption will attend contract training as soon as feasible. Multiple requests for exemption for an individual will not be approved. State agencies are responsible to ensure that staff attend the training after receiving the waiver.

1.9 Risk-Based Audits

Senate Bill 5629, passed by the 2002 Legislature, requires OFM to conduct risk-based audits of the personal service contracting practices of state agencies to ensure agency compliance with the *Guide to Personal Service Contracting*. OFM selects the agencies and conducts the audits, based on funding provided. The audit results are forwarded to the Governor, the appropriate standing committees of the Legislature, and the Joint Legislative Audit and Review Committee.

1.10 Audit and Investigative Findings

Senate Bill 5629, passed by the 2002 Legislature, requires the State Auditor's Office (SAO) and the Attorney General's Office (AGO) to provide an annual report of agency personal service contract audit and investigative findings, enforcement actions, and the status of agency resolution. The SAO and AGO will submit the report to the Governor and the Legislative policy and fiscal committees by November 30th of each year.

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

1.11 Frequently Asked Questions and Answers

Q1: How long does it take to conduct a formal competitive procurement, e.g. personal services of $20,000 or greater?

A: The time can range from six weeks to six months, depending on the complexity. A simple procurement, which does not involve much research or planning on the part of the respondents, may take four weeks, plus two weeks if OFM filing with a ten-working day filing period is required. Most personal service procurements in this dollar range require at least eight weeks to complete.

Q2: What type of newspaper must be used to comply with the requirement that competitive contracts of $20,000 or more be advertised?

A: Advertising in a major daily newspaper in Washington State meets the minimum requirements of OFM Policy 15.20.10. Washington State newspapers that satisfy this requirement are the Daily Journal of Commerce, the Seattle Times, Seattle P.I., the News Tribune, and the Wall Street Journal. Agencies may also advertise in one or more minority newspapers (see Chapter 3, Section 3.3, for a list) and a newspaper in eastern Washington, such as the Spokesman Review (Spokane) or the Yakima Herald.

Q3: How long after advertising may the procurement document be issued?

A: A reasonable amount of time, generally as designated in the advertisement, must be allowed to enable prospective bidders an opportunity to express interest in receiving the solicitation, generally one week is recommended. The solicitation document should be issued to all requesters at the same time, insofar as possible, to allow bidders an equal amount of time to respond to the procurement. Late requests for the solicitation document should be honored, but the late requests should not be reason to delay the due date.

Q4: How much time should be allowed for the bidders to respond to the procurement?

A: A reasonable amount of time must be allowed for response, depending on the complexity of the information requested in the procurement. Two weeks is generally the minimum for a simple

Request for Qualifications/Quotations. An average amount of time for responses is one month after the solicitation document is issued. This allows time to hold a pre-proposal conference and to issue an addendum of responses to questions.

Q5: What criteria are used to evaluate Requests for Proposals (RFPs)?

A: Evaluation is generally divided into three parts: technical, management, and cost. The technical section describes the consultant's approach and solution to the project. The management section provides information about the consultant's experience and qualifications. The cost section explains the consultant's pricing structure. Criteria may also include:

- Understanding of the project
- Quality of work plan (technical solutions)
- Ability and capacity of the bidder and staff
- Experience with similar projects
- Project team structure and internal controls
- Ability to perform within timeframe and to adhere to schedule
- References

Q6: When competitive procurement is required, may a contract be awarded based on a Request for Information (RFI)?

A: No. The RFI merely seeks information and may not be the basis of a contract award.

Q7: Does a personal service contract have to be in writing?

A: Yes. A written document specifying the agreement between the agency and the contractor must be prepared for all contracted personal services. Identification of the parties, scope of services, compensation and payment, period of performance, and signatures of responsible parties are examples of required elements. Numerous other elements should also be included in contract documents to provide additional legal protection to the state. See OFM Policy 15.10.45.

Q8: Are there ways to write a contract to ensure the contractor's legal status as an independent contractor rather than as an employee?

A: Yes. For example, a contractor is not required to work established hours (e.g., 8 to 5); a contractor is independent from control of the agency as to how work is performed but rather is responsible for "results"; the agency does not control the contractor's behavior or financial activities; the contractor may earn a profit or loss; contractor establishes the order and sequence of the work; cannot "quit" without liability; etc.

Q9: What is the difference between a personal service and purchased service contract?

A: Personal services are professional or technical services provided by a consultant to accomplish a specific study, task or other work statement. Purchased services are provided by a vendor to accomplish routine, continuing and necessary functions. Personal services are performed independently from the day-to-day control of the agency. Purchased services are usually more routine or mechanical in nature. See Section 1.5.1 of this guide for more information.

Q10: For purposes of determining whether the $5,000 sole source filing threshold or the $20,000 sole source filing threshold has been reached by individual contractors, agencies must add or aggregate all sole source personal service contracts awarded to a contractor by the agency in a fiscal year period. Are competitively procured personal services also aggregated for this determination?

A: No. Only sole source contracts awarded during a fiscal year to a single contractor are aggregated, to determine whether these thresholds have been reached for filing sole source contracts. See OFM Policy 15.30.30, for more information.

Q11: When a contract must be filed at least 10 working days prior to the proposed contract start date, how are those days counted?

A: Start counting the first working day after the filing is submitted to OFM and count 10 business days. (Weekends and state holidays are not included in the count.) The contract may start, at the earliest, on the 10th working day after the date of filing. The contract may also start later than the 10th day subject, of course, to OFM review/approval.

Q12: Institutions of higher education file only state-funded contracts. Are federal funds considered "state funds" for

purposes of determining whether or not these rules apply?

A: For the purposes of this statute, "state funds" are defined as funds appropriated by the Washington State Legislature or allotted by the agency, OFM Policy 15.30.10(g). If the federal funds are appropriated or allotted per the definition, then federally funded contracts could be subject to filing.

Q13: Notice of sole source contracts in the amount of $20,000 or more must be advertised in a statewide or regional newspaper. Are there exceptions to this requirement?

A: Yes. Exceptions to state advertising requirements are possible when:

- Selection of the contractor is based on a personal accomplishment or characteristic, e.g., guest speaker, performer or artist.
- Funding source mandates with whom the agency contracts.
- OFM determines that advertising is inappropriate, based on written agency request. See OFM Policy 15.30.30.

Q14: What is the penalty for late filing?

A: The penalty for late filing, when levied, is $300 (civil penalty) for the responsible state officer or employee. A consultant who knowingly violates the personal service contract statute Chapter 39.29 RCW is subject to the greater of $300 or 25 percent of the amount of the contract. See OFM Policy 15.10.35.

Q15: When should an agency process a contract amendment rather than a new contract?

A: An amendment may be issued when the nature or scope of the work is relatively unchanged and if the contract allows for the amendment. A new contract should be issued when the essential character of the work has changed, or if there is a substantial change to the scope of work, duration, or cost and/or where there is a logical break in service. See OFM Policy 15.20.90.

Q16: Can a contract include more than one type of service? For example, can it contain both personal services and purchased services?

A: Yes. A single contract may have elements of more than one type of service. In this instance, the contract can generally be processed using the procedure for the predominate type of service. (Exceptions are possible.)

Q17: Are larger contract filings scrutinized more at OFM?

A: Yes. Personal service contracts of $100,000 or more receive review by budget analysts in the OFM Budget Division, as well as review in the OFM Contract Office. The budget analysts review whether:

- There is an allotment for the funds,
- The expenditure is consistent with the Agency's budget,
- There is a connection with budget assumptions.

CHAPTER 2

Planning and Preparation

2.1 Careful Planning and Documentation is Key

Procurement actions cannot be carried out successfully without sufficient planning and preparation by the agency. Planning lays the groundwork for an efficient and effective process. It provides information that enables staff to decide how best to accomplish the procurement, what specific actions need to be taken to obtain the service, and how to assure contract performance is accomplished to meet program requirements. Advance planning also provides the means for an agency to assure it is in full compliance with state statutes, regulations, policies and procedures. Good analysis, good thinking, and good planning are the best ways to ensure selection of a qualified consultant. Selecting a qualified consultant sets the stage for success, but good contract management will help ensure that the agency gets the results expected from the contract.

Documentation plays an important role in the whole contracting process. It is important to document the decisions made throughout the contracting process. Appendix F contains several examples of documentation forms, but agencies have discretion in how documentation occurs, so these forms are examples only.

2.2 Define Your Needs

In the initial stage of planning, the agency should develop a clear perception and description of the need.

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 service required to meet the need. Defining the need also contributes to the determination of how performance and quality will be measured.

The ability to specify and convey what is needed forms the basis for obtaining a fair and reasonable price while selecting the best-qualified contractor.

Two questions should be answered: 1) Is there a real need for the service? and 2) If there is a real need or problem, what is the most feasible method to resolve it? Answers to these questions should become clear in the process of developing a work statement. The work statement should begin with a clear definition of the issue, need, or problem, and be supplemented with comprehensive background information regarding the work needed. This affords management an instrument to weigh all options.

2.3 Risk Assessment Approach to Contracting

Risk assessment is the process of evaluating exposure to harm or loss that could arise from some activity associated with the personal service contract. It consists of identifying and classifying risks based on certain characteristics, and measuring and evaluating the consequences of these risks.

Contract managers should conduct a risk assessment throughout the contracting process, including when:

1. Deciding to contract out services and selecting contractors;
2. Determining the level of monitoring and/or auditing needed;
3. Targeting efforts to areas of greater risk; and
4. Prioritizing contracts for monitoring and/or auditing purposes.

The risk-based approach allows contract managers to better focus their oversight efforts on higher risk contracts. A risk assessment evaluates risk factors in order to determine contract language to include in the contract, to mitigate risks and how much monitoring and/or auditing should be done.

Examples of risk factors that may be considered are:

- The state agency's experience with the contractor,
- Contractor systems and controls, and
- Changes in the contractor's operations or personnel.

Risk factors can be broken out into two broad categories: 1) risks associated with personal services, and 2) risks associated with personal services contractors.

Risks associated with personal 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 or complex?

Payment method – What type of payment method will be used? (e.g., cost reimbursement, fee for service, performance based.) What experience does the state agency have with the method?

Competition – Are contracts awarded on a competitive basis, which includes detailed evaluations of the personal service proposal, costs, and contractor qualifications, or are they awarded on a noncompetitive basis?

Risks associated with personal service 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 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 with the state for this type of service? What is their performance history? Have there been changes in key staff?

Accreditation/licensure – Are contractors licensed and insured?

Financial health and practices – Is the contractor's financial condition good or poor? 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? Does the contractor do business with related parties and, if yes, does this business affect agency funds?

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 these subcontracts?

Organizational changes – Has there been frequent turnover of contractor management, senior accounting staff or key program personnel? Has the contractor taken on any new services within the last 12 months? Has the contractor experienced a recent rapid growth or downsizing? Has the contractor experienced reorganization within the last 12 months? Has the contractor changed major subcontractors recently?

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 12 months?

Based on the results of the risk assessment, contract managers may decide whether to contract out services, which contractor to select or the scope, frequency, and methods of monitoring and/or auditing to be used to ensure sufficient oversight, 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 and/or audit the use of public funds.

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.

It is also important to note that the risk inherent in a contractor's potential performance is dynamic. The risk assessment should be updated periodically to promote fair consideration of the contractor's performance.

2.4 Get Management Support

Management's buy-off of the project is another step to determine whether to proceed beyond the planning phase. Each agency will proceed in this phase according to its own internal processes. Management will play a key role in preparing the agency for the project. This support will:

- Clarify what the consultant will be doing.
- Prepare staff to assist the consultant.
- Improve the consultant's productivity.
- Minimize the inconvenience and disruption to staff due to the consultant's presence.
- Establish responsibility for post-contract decisions, wherein the consultant's recommendations are implemented.

2.5 Why Use a Consultant?

Agencies use consultants to meet needs or to address specific problems when internal resources are not available. Consultants have historically been used to provide:

Specialized Skills, Knowledge and Resources – An agency might engage a professional consultant to focus greater specialized knowledge and technical skill on a problem than can be provided by internal staff. A qualified consultant will possess the body of knowledge, skills and techniques in a given area of specialization.

Broad Experience – While each agency's situation is in some respects unique, few problems are completely without precedent to professional consultants. An experienced consultant has learned to anticipate problems and draw from techniques developed in similar situations for solving the problems. Often a consultant can offer an agency previously tested solutions to chronic operational or technical problems.

Objectivity – One of the most valuable attributes of an outside consultant is objectivity. The consultant may offer an independent and impartial perspective that brings fresh and constructive insights into a situation.

Credibility – In some instances, state agencies must present findings and recommendations to policy makers, such as the Governor, Legislature, commissions, etc. An independent qualified source can often bring credibility to an evaluation of the problem. Policy makers often value recommendations offered by reputable consultants with extensive expertise and stature in their fields.

Timeliness – A consultant can devote a concentrated effort to an identified problem without the distractions of daily operating responsibilities. This is particularly important when a deadline for a project has been established and staff schedules and other work assignments conflict with the project completion date.

Innovation – A consultant can fill an important role in advocating change. Occasionally, solutions fail internally because vested interests, internal loyalties, tradition or pre-conceptions promote resistance to change. An effective consultant can offer innovative suggestions and inform decision makers of the benefits of creative approaches to long-standing problems.

If agency management determines that a project is warranted, the statement of need will provide direction to potential consultants. The statement of need will also be useful in establishing a basis for evaluating the consultants' proposals.

2.6 Cost/Benefit Analysis

After defining the need, it may be beneficial to assess the need versus the cost of obtaining desired results. This cost/benefit analysis enables the agency to determine very early if a project is warranted and to identify the specific benefits that will be obtained by the project. This analysis acknowledges that any benefit has an associated cost, not only in consulting fees, but also from possible changes in agency systems, procedures, and techniques requiring staff training, new equipment or special management attention.

The agency, at this point, should define what is expected from a consultant to achieve the identified benefits. Issues to consider include:

- *What level of technical expertise is needed?*

- *When is the service required?*
- *How is the consultant to approach the problem or task*?
- *Where is the service to be delivered?*
- *What products should the consultant deliver?*

The cost of private consulting services is dependent upon a combination of factors, including:

- *Scope and depth of the task*
- *Urgency for delivery*
- *Level of expertise required*
- *Availability of qualified consultants*
- *Reputation and professional stature of the consultant*
- *Risk associated with the project*
- *Experience level required for the project*
- *Project travel and related costs*

Potential benefits of contracting for services may include:

- *Savings to state government and taxpayers*
- *Expertise in areas not currently available*
- *Decrease in workload and equipment requirements*
- *Ability to meet geographic needs*

2.7 Available Funding

One of the most important considerations to be addressed during the planning process is the availability of sufficient funding to cover the project expenditures. Adequate funding based on in-house cost projections must be verified by the contract manager. If funding is inadequate or non-existent, the project cannot proceed.

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. A state-funded contract can cross biennial lines, but the contract should contain a term indicating services beyond June 30 are subject to

availability of funding.

In addition to the identified costs associated with contracting for personal 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.

2.8 Available Public Resources

After the required service is defined, agencies must determine the availability of qualified public resources before considering a private consultant. RCW 39.29.008 (2) and (3) prohibits entering into personal services until an agency can document that public resources are not available. Technical expertise may be available from a variety of sources, such as:

- Employees within the agency.
- Other state, federal, and local agencies that have conducted similar projects, encountered similar problems, or have similar functional responsibilities.
- Other Washington State agencies with specialized professional expertise.

2.9 Legal Constraints to Contracting

Certain legal requirements must be carefully considered before contracting for outside consulting services. **However, many provisions of the 2002 personnel system reform legislation will impact the items below when they become effective in July 2005.** Detailed information will be provided prior to the effective date.

Traditional State Work – State agencies should not contract if the needed service constitutes work traditionally or historically performed by state employees unless there is specific legislative authority to do so. (Washington State Supreme Court ruling in Washington Federation of State Employees v. Spokane Community College, 90 Wn.2d 698, 1978)

Termination of Classified Employees – The contract should not be entered into if execution of a contract would have the effect of terminating classified employees or classified employee positions currently existing at the time of the

execution or renewal of the contract. (RCW 41.06.380)

Collective Bargaining – A personal service contract should not be awarded if contracting would adversely affect any collective bargaining agreements.

The agency should seek legal advice from the Assistant Attorney General regarding these or similar situations where legal requirements are uncertain.

2.10 Access to Data

RCW 39.29.080 prohibits state agencies from entering into personal service contracts when the contractor could charge additional costs to the agency, the Joint Legislative Audit and Review Committee, or the Office of the State Auditor for access to data generated under the contract. For the purposes of this requirement, "data" includes all information that supports the findings, conclusions and recommendations of the contractor's reports, including computer models and methodology for those models.

2.11 Merit System Alternatives to Contracting

Merit system rules also provide alternatives to personal service contracting. The following items provide a brief definition of options available. For additional information, contact your agency Personnel Office or the Department of Personnel.

Emergency Appointments – Emergency appointments can be made for up to 30 calendar days, may be made on short notice, and do not require that the employee meet minimum qualifications.

Temporary Appointments – Temporary appointments may last for no more than nine months total for any single or multiple appointments within a continuous 12-month period. The employee must meet the minimum qualifications for the job class.

Intermittent Appointments – Intermittent appointments may be made for up to 1,560 hours during any consecutive 12-month period, but they may not be used for regular full-time work. Intermittent appointments are used when there is no particular pattern or predictable schedule. The employee must meet the minimum qualifications for the job class.

Part-time Appointments – Appointments may be made on a part-time basis, as needed, but must be referred from a register. These are permanent appointments into civil service. The employee must meet minimum qualifications for the job class.

Project Appointments – Project appointments may be made when the length of employment is contingent on state, federal or other grant funding for specific and non-continuing projects. Employees must meet minimum qualifications for the job class. Employees are terminated when funding for the project ends. Projects are approved and established by the Department of Personnel and normally last up to two years.

WMS Appointments – The Washington Management Service (WMS) also provides for non-permanent, acting appointments that may be made when necessary to meet an agency's organizational needs.

Contracts for services that appear to have any of the following elements should be reviewed by the agency personnel office or Assistant Attorney General to determine the appropriateness of award. This includes any contract that:

- Circumvents or avoids the competitive employment procedures of the state civil service system.
- Performs a job that a classified employee can do.
- Performs a job that could be accomplished by resources within the agency or other state agencies.
- Creates a full-time, continuous position.

2.12 Using State Certified Minority and Women Owned Firms

RCW 39.19 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. Currently, the overall goals for personal (professional) services are 10 percent for MBEs and 4 percent for WBEs. OMWBE may be contacted at (360) 753-9693 for information or assistance in locating certified minority or women owned businesses.

Goals may be established for individual competitive procurements, but the procurement document must state that the goals for MBE and/or WBE participation are voluntary. No preferences for MBE and/or WBE participation will be included in scoring of the proposals, no minimum level of MWBE participation shall 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 may result in termination of the contract.

2.13 Independent Status of a 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 employment tax 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. All evidence of control and independence in this relationship should be considered. The facts that provide this evidence fall into three 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 unreimbursed 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, and
- 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, and
- 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 this determination is made correctly.

2.14 Performance Measures and Outcomes

Agencies may want to consider whether performance measures and outcomes should be identified in the contract. The purpose of performance measures is to provide a standard or measure for performance of the contracted services. Performance measures are also used to determine if, and when, the contractor has successfully completed performance, and when and how much the contractor should be paid.

Contract performance measures may:

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

The purpose of performance measures in a contract is to provide a standard or measure for quality and performance of the services provided.

When developing performance measures, consideration should be given in advance to how the data is to be submitted, analyzed, and maintained. Key questions to consider include:

- How much information can reasonably be requested, submitted, and analyzed?
- How often and on what schedule must the data be reported?
- How will the information be submitted?
- Who will receive the information?
- How will feedback be provided to the contractor?
- What is the cost and benefit of each proposed performance measure?

Characteristics of good performance measures:

- Are easily understood by contractors, state agencies, and the general public.
- Focus on the performance expected from the contractor.
- Are well defined and consider both the quantitative (how much?) and qualitative (how well?) aspects of performance.
- Include a well-defined method for reporting data.

- Are relevant, timely, and verifiable.
- Are 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(s) or statutory authority to determine whether any specific outcomes are mandated. Then, consider the follow questions:

- How will you know the service has actually been provided (other than taking the contractor's word for it)?
- Are you concerned about the *quality* of the service? If so, include a mechanism for measuring quality.
- Are you looking for a specific outcome?
- Is payment contingent on an event, product, or outcome? If so, how will you ascertain that the contractor has satisfied the requirement? If not, consider tying payment to an event, product, or outcome.

2.15 Master Personal Service Contracts

Department of General Administration

Agencies may acquire personal services through master personal service contracts competitively awarded by the Department of General Administration (GA) State Purchasing, Professional Services Solutions team. Services available through GA master contracts include: appraisal services, management consulting, investigative services, audit services, environmental consulting services, customer survey services, and information technology services.

To access the services, agencies conduct a second-tier competitive process that meets the requirements of formal solicitation when conducted in accordance with GA's process. When using GA's second-tier competitive process agencies are to maintain adequate documentation to substantiate that all bidders were treated equally and fairly and that an equitable and impartial competition was conducted under the second-tier process.

Simply accessing names of firms from GA's list does not satisfy the requirement for second-tier competition. An agency must issue a work request to multiple vendors on the pre-qualified vendor list established by GA. The agency must evaluate responses to the work request. The agency will award a work contract to the bidder whose response best meets the requirements of the work request.

The non-Information Technology (IT) personal service contracts awarded under GA's second-tier competitive process ***do not*** require filing with OFM. GA has filed the contracts under the first-tier competitive process and reports activity under the contracts to OFM.

The IT personal service contracts awarded under GA's second-tier competition ***do*** require filing with OFM and are subject to the applicable filing periods.

Department of Personnel

Agencies may also acquire personal services from the Department of Personnel's master personal service contracts. These contracts are primarily awarded for training services, but contracts are also available for organizational consulting services. Visit DOP's website for more information.

CHAPTER 3

Locating Consultants

Locating sufficient numbers of service contractors to ensure competition is both rewarding and essential to success.

3.1 Sources

Consultants may be located using many sources:

- *Responses to a published legal notice (required for personal service contracts of $20,000 or more)*
- *Agency consultant listings or bidder's lists*
- *Office of Minority and Women's Business Enterprises directory*
- *Internet*
- *Trade journals and periodicals*
- *Professional societies and associations*
- *Telephone book*
- *Master personal service contracts issued by the General Administration and Department of Personnel*

The directory of certified women and minority owned businesses is updated at least quarterly. Agencies can view this database on the web at:
http://www.omwbe.wa.gov/directory/directory.htm
or contact OMWBE directly at (360) 753-9693.

3.2 Large Firms Versus Small Firms

There are large consulting firms, small consulting firms, and sole proprietors. Large firms generally have a wider variety of technical resources and support services, but they often have higher overhead and higher fees. Small firms and sole proprietors generally devote more of themselves and their talents to the client (the agency). Your agency may be their principal or only client at the time. Yet in a small firm there is also the potential of not receiving as broad a level of technical support as one might need for a project. The choice will depend on the particular assignment or project and its complexity and scope.

3.3 Advertising and Sample Legal Notice

Advertisement of a personal service competitive solicitation of $20,000 or more must be placed in a major, daily newspaper for at least one day.

Agencies are required to advertise in a major daily newspaper whenever a personal service competitive procurement is $20,000 or greater. Publishing a legal notice makes the existence of the procurement known to the public and maintains the integrity of the competitive process. The ad is to describe the scope of work clearly enough so that potential bidders can make an informed decision as to whether to request the solicitation document.

A legal notice for competitive procurements of $20,000 or more is **required** to be published in one major, daily newspaper in Washington for a minimum of one day. The newspapers that satisfy this requirement are the Daily Journal of Commerce, the Seattle Times, the Seattle Post Intelligencer, the News Tribune, and the Wall Street Journal. The advertisement may also be placed in the media appropriate to the type of procurement, such as trade journals. The Daily Journal of Commerce is particularly recommended for legal notices as it reaches a broad spectrum of the consultant community.

Legal notices are distinguished from public notices in that they are paid advertising and are printed in the "Legal Notices" section of classified advertising. The number of newspapers and duration of the advertisement will depend on the complexity of the procurement, time frame of the project, and availability of qualified consultants, but one day is required in a statewide newspaper as indicated above.

An abbreviated list of daily and weekly publications is included for reference:

Daily Journal of Commerce
PO Box 11050
Seattle, WA 98111
Phone: (206) 622-8272
FAX: (206) 622-8416
E-mail: legals@djc.com

Seattle Post Intelligencer
PO Box 1909
Seattle, WA 98111-1909
Phone: (206) 448-8000
FAX: (206) 515-5595

Seattle Times
PO Box 70
Seattle, WA 98111
Phone: (206) 464-2111
FAX: (206) 515-5566

Spokesman Review
PO Box 2160
Spokane, WA 99210
Phone: (509) 456-7355
FAX: (509) 459-5156

News Tribune
PO Box 11000
Tacoma, WA 98411
Phone: (253) 597-8742
FAX (253) 552-7042

The newspapers previously listed satisfy the requirement of a major, daily newspaper for advertising competitive personal service procurements of $20,000 or more.

The following list includes various other newspapers including minority newspapers.

Yakima Herald-Republic
114 N 4th Street
PO Box 9668
Yakima, WA 98901
Phone: (509) 577-7741
(800) 343-2799
FAX: (509) 577-7766
E-mail: legals@yakima-herald.com

Wenatchee World
14 N Mission Street
PO Box 1511
Wenatchee, WA 98807
Phone: (509) 663-5161
FAX: (509) 665-1182

The Columbian
PO Box 180
Vancouver, WA 98666-0180
Phone: (360) 694-3391

(800) 743-3391
FAX: (360) 699-6033

Tri-City Herald
PO Box 2608
Tri-Cities, WA 99302
Phone: (509) 586-6181
(800) 874-0445
FAX: (509) 582-1453

Minority newspapers include:

The Skanner
PO Box 94473
Seattle, WA 98124
Phone: (206) 233-9888
E-mail: seattle@theskanner.com

The Seattle Medium
2600 S Jackson Street
Seattle, WA 98144
Phone: (206) 323-3070
FAX: (206) 322-6518

Seattle Chinese Post/NW Asian Weekly
412 Maynard Avenue S
PO Box 3468
Seattle, WA 98114
Phone: (206) 223-5559
FAX: (206) 223-0626

State agencies may also advertise in the Federal Commerce Business Daily, if the project is federally funded. Agencies are encouraged to use the Internet to search for contractors who may provide the services they seek. Agency bidder's lists may be used in addition to advertising the project, but not as a substitute for advertising.

An exception to advertising in a major daily newspaper is allowed when the contract services will be provided entirely outside of Washington, Oregon and Idaho, or when they are provided outside the United States. *Example:* out-of-state taxpayer audits or trade representatives in a foreign trade office.

RCW 39.29.018 also requires advertising of sole source personal service contracts in the amount of $20,000 or more. A sole source ad may be placed in a regional or statewide newspaper. This additional step publicly announces the sole source procurement and provides verification to the agency that no other sources are available to provide the particular service.

STATE OF WASHINGTON

(AGENCY NAME)

LEGAL NOTICE

The **(Agency Name)** will issue a Request for Proposals (RFP) to:

_____

_____

_____

The estimated length of the project is: _____.

Approximately $_____ is available for this project. *(NOTE: optional term)*
The Request for Proposals will be issued on or about **(Date).** Proposals are due by 4:30 p.m., local time, on **(Date)** in the office at the address listed below.

Washington State is an equal opportunity employer and minority and women-owned businesses are encouraged to reply.

If applicable, the legal notice, RFP and any addenda will be posted on the **(Agency Name)** website at: **(Website address)**.

For further information and to obtain a copy of the Request for Proposals contact:

Agency Name _____
Attention: _____
Address _____
City, State, Zip code _____

Telephone: _____
FAX: _____
E-mail: _____

3.4 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

You may obtain additional information about the master application through the Department of Licensing's Internet site: http://www.wa.gov/dol/bpd/buslic.htm. 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.

CHAPTER 4

Filing Requirements for Personal Service Contracts

"Filing" of personal service contracts is a requirement unique to this type of state contract, and provides the additional executive oversight desired by the Washington State Legislature.

The Washington State Legislature has maintained a continuing interest in personal service contract activities and has passed laws requiring specific oversight and reporting requirements. Therefore, once an agency has made the decision to seek outside consulting assistance, it is advisable to review the current requirements for filing personal service contracts to determine if they apply to the proposed contract or amendment.

Current requirements, as stated in the introduction, Getting Started, are set forth in Chapter 39.29 RCW and in the *State Administrative and Accounting Manual*, Chapter 15, issued by the Office of Financial Management.

Agencies subject to the filing requirements include any state office or activity of the executive and judicial branches of state government, including state agencies, departments, offices, divisions, boards, commissions, higher education institutions, and correctional institutions. Excluded from the competition and filing requirements of Chapter 39.29 RCW are entities such as the legislative branch of state government, local government, port districts, educational service districts, and other governmental entities that are not listed here.

Categories of contracts and amendments, which require filing with the Office of Financial Management, are discussed in the detail in the following sections of this chapter. For easy reference, two summary charts of filing requirements – one for state agencies and one for institutions of higher education – are included at the end of this chapter.

4.1 What is Contract Filing?

"Filing" for the purposes of this manual means submitting personal service contract information to OFM for OFM "review" and/or "approval" and for public inspection by interested parties. OFM "review" is defined as: OFM reviews the contract and makes recommendations as needed. The agency can sign the contract and the contractor may start work immediately. OFM "approval" is defined as: The contract is subject to the ten working day waiting/filing period. OFM may require changes and may disapprove the contract.

A contract filing consists of entering pertinent contract data into the OFM Personal Service Contract Database (PSCD) and attaching the contract or amendment. Since June 1, 2003, the PSCD has been the exclusive way to file and report contracts to OFM.

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 administrator is, contact OFM at the PSCD online help phone numbers: (360) 725-5257 or (360) 725-5262, or send an e-mail to: ofm.contracting@ofm.wa.gov

4.1.1 Accessing the PSCD

For information regarding access to the PSCD to file or report a personal service contract or amendment, contact the PSCD Help Desk at (360) 725-5257 or (360) 725-5262.

4.1.2 Copy of the Contract or Amendment

An unsigned certified copy of the contract or amendment is to be submitted as part of the filing in the PSCD. Certified means that the contract or amendment, although unsigned, is a true and final copy of the agreement between the parties. When the filing is submitted, the filed contract or amendment constitutes a certified copy.

Filing an unsigned, certified copy allows the agency to acquire the contractor's signature on the contract or amendment concurrent with OFM processing, which is helpful when contracts or amendments are subject to the 10 working day filing period.

Attachments or exhibits to the contract document should also be included with the contract filing. For example, if the contract was competitively bid, the agency's procurement document and the contractors successful proposal should also be electronically attached to the filing, if they are incorporated

as exhibits into the contract. When filing a contract electronically, you may attach the exhibits electronically or if they are only available in hard copy, indicate in the PSCD you are mailing a hard copy.

4.1.3 Documented Justification

Personal service filings must include a comprehensive explanation of the contract purpose, background and procurement. The filing justification must be able to withstand public, legislative, and executive scrutiny. Therefore, it should be prepared as if it were being read by many others outside of your agency, for it will be. Through PSCD, other agencies may also view your processed filings, including the justification and the contract documents.

4.2 General Filing Information

4.2.1 Filing Periods

Three different filing periods currently apply to contracts and amendments filed with OFM, as noted in the following tables.

State Agencies	
Filing Period	**Filing Category**
Contract is filed with OFM no later than the start date of services.	Competitively solicited contracts of $20,000 or more and their amendments. [NOTE: Exceptions are competitive contracts, which also fall in the first two bulleted categories in the following box.]
Contract is filed with OFM a minimum of 10 working days **prior to** the proposed start date of services.	• Competitive contracts of $20,000 or more and their amendments for the following, identified by category sub-object: ∗ Management consulting - CA ∗ Organizational development - CA ∗ Marketing - CG ∗ Communications - CH ∗ Employee training - CJ ∗ Employee recruiting - CK • Amendments to sole source or competitive contracts that result in the contract being greater than 50 percent of the original contract value, or 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 the start of services or contract execution, whichever is sooner.	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.

Institutions of Higher Education	
Filing Period	**Filing Category**
Contract is filed with OFM no later than the start date of services.	Competitively solicited contracts of $20,000 or more, and their amendments, and the contract includes $20,000 or more in state funds. Also, amendments to these contracts that do not exceed 50% of the original contract amount or do not substantially change the scope of work. [Note: Exceptions are competitive contracts that also fall in the first three bulleted categories in the following box.]
Contract is filed with OFM a minimum of 10 working days **prior to** the proposed start date of services.	• Competitive contracts of $20,000 or more, and their amendments, for the following, identified by category sub-object: ∗ Management consulting - CA ∗ Organizational development - CA ∗ Marketing - CG ∗ Communications - CH ∗ Employee training - CJ ∗ Employee recruiting - 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, must include $5,000 or more in state funds. • 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, must include $5,000 or more in state funds. For competitive contracts, must include $20,000 or more in state funds. • 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 the start of services or contract execution, whichever is sooner.	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.

4.2.1 Filing Periods – *continued*

The term "working days", for filing purposes, excludes Saturdays, Sundays and state holidays and the date of contract filing.

For contracts subject to the 10 working day filing period, the earliest start date is the tenth working day after, but not including, the date of filing, subject to OFM review or approval. The agency may also start work any time after the tenth working day, subject to OFM review or approval. The contract start date can fall on a weekend or holiday **after** the tenth working day, if the agency desires.

To minimize confusion about the start date of contracts and amendments subject to the 10 working day filing period, the contract or amendment should include the following or a similar provision:

> *Under the provisions of Chapter 39.29 RCW, this personal service contract/amendment is required to be filed with the Office of Financial Management (OFM). No contract required to be so filed is effective and no work shall commence nor payment made until ten (10) working days following the date of filing, and, if required, until reviewed and/or approved by OFM. In the event OFM fails to approve the contract, the contract shall be null and void.*

The filing period provides time for OFM processing, but also provides a public review period. If OFM review or approval is completed prior to the ten-day period, the effective start date remains 10 working days after the filing date.

OFM may adjust the start date beyond the 10 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 10 working days, an adjustment will not be necessary. **However, it is the agency's responsibility to verify that OFM approval has been granted prior to starting work.** The PSCD notifies the agency contacts when OFM has completed its contract review.

Competitive contracts or amendments that are not subject to the 10 working day filing period must be filed, but the contract start date may be the working day the contract is filed or date of execution, whichever is later, or any day thereafter.

4.2.2 OFM Processing of Filings

Once the filing is received at OFM through the PSCD, OFM reviews the filed document for completeness and accuracy, and for content and substance. If there are questions on the contract submittal or if it is incomplete, the OFM Contract office sends the questions to the identified agency contact through the PSCD. The agency contact then receives an e-mail that OFM has questions on the filing. They then log on to the system to review and respond to the question(s).

Contracts and amendments occasionally fall into more than one category. Filings that fit into both a “review” category and an “approval” category are processed as “approval” filings, and are subject to the 10 working day filing period.

When the contract and justification have been analyzed and the filing is considered complete, the OFM Contract office designates the filing as reviewed or approved, as applicable. If the value of the contract filed is $100,000 or greater, or an amended contract is $100,000 or greater, additional internal review is conducted by OFM. (This is true even if a zero cost amendment is filed, but the contract itself is in an amount of $100,000 or more.) Those filings are sent to the OFM Budget Division for review. Once the Budget Division review is complete and, if they concur with proceeding, a final decision is made by the OFM Contract Office and the filing is finalized.

After OFM processing is complete, the agency receives an e-mail from the PSCD indicating the disposition.

OFM disapproves contracts on an exception basis. In general, OFM works with agencies to assist in meeting their contracting needs. On occasion, there may be disagreement as to the approach on a contract or the need for the services. If this is the case, OFM will contact the agency to advise them of any concerns. Depending upon the issue or circumstances, more information may be required from the agency to resolve the issue. When that is not a feasible solution, the filing is disapproved. In instances when a sole source contract is submitted that OFM determines should be competitively

procured, the agency may conduct a competitive solicitation process and re-file the new competitive contract.

When the decision to disapprove a contract is made, OFM provides the reasons for disapproval to the agency as part of the "Decision Comments" in the PSCD.

4.2.3 Filings for 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 agency. 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.

Therefore, sole source contracts of less than $5,000 are not subject to filing based on a cumulative count of sole source contracts awarded to a contractor in a fiscal year, as they are with state agencies. The sole source contract itself must include $5,000 or more in state funds to be subject to filing for institutions of higher education.

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.

4.2.4 Contract Amendments

Generally, if a contract is subject to filing with OFM, its amendments are also subject to filing. Contract amendments to be filed are those that:

- Increase the maximum contract cost;
- Decrease the maximum contract cost;
- Revise the contract scope of work; and/or
- Revise the period of performance.

Decrease amendments to filed contracts are to be filed with OFM within three working days of start of services or date of execution, whichever is sooner, and are designated as "review" filings.

Contract amendments that do **not** require filing with OFM include the following:

- Amendments that result in administrative changes to the contract, such as an address change, budget line item adjustments that do not revise the total contract cost, change of project manager, etc.
- Amendments awarded at the end of the contract term solely for the purpose of extending the contract period for two months or less. This provision applies only once, per contract. It is not intended to authorize multiple short-term time extensions to a contract.

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:

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, requires OFM approval, and is subject to the 10 working day filing period.
2. A contract is competitively awarded for $10,000 and does not require filing. 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. **Note**: This example would not apply to institutions of higher education because they file only competitive contracts that contain $20,000 or more in state funds.

4.2.5 Contract Total

For filing purposes, the total dollar amount of the contract or amendment includes the fee and the amount for any expenses or taxes authorized for reimbursement under or through the contract.

4.2.6 Late Filings

What happens when you are looking through a contract file and discover that a contract or amendment has not been filed with OFM? We hope this will not happen, but if it does, the contract or amendment should be filed but will be designated as a "late filing". A late filing may occur in three instances:

1. Contracts or amendments subject to the 10 working day filing period are filed with a requested start date that is less than 10 working days from the date of filing.
2. Competitively solicited contracts of $20,000 or more, or their amendments, subject only to OFM review, are filed after the start date of services.
3. Emergency contracts are filed more than three business days after the start of the emergency work or execution of the contract.

Late filings are accompanied by justification in the PSCD that explains:

- The reason for the late filing; and
- How a similar situation resulting in late filing will be prevented in the future.

OFM will designate the filing "late" as part of the review process.

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 to have been formally reviewed or approved by OFM.

4.2.7 Failure to File

Failure to file contracts as required in Chapter 39.29 RCW in a timely manner might subject the responsible state officer or employee to a $300 civil penalty. A consultant who knowingly violates Chapter 39.29 RCW in seeking or performing work under a personal service contract may also 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 will audit these violations. The Attorney General's Office may prosecute the violations.

4.3 Which Contracts and Amendments Must Be Filed?

Personal service contracts and amendments subject to filing are described in this section. Some of the categories may overlap; therefore, it is necessary to be familiar with all of them to ensure that contract filings are submitted timely and with complete and accurate justification.

Section 4.11 of this chapter includes two filing charts to provide a quick reference for filing categories – one applicable to state agencies and one to institutions of higher education. Again, institutions of higher education file only sole source contracts that include $5,000 or more in state funds and competitive contracts with $20,000 or more in state funds. All other agencies file contracts or amendments according to the filing requirements regardless of fund source.

4.3.1 Filing Sole Source Contracts and Amendments

Sole source contracts and their amendments are those that have not been competitively procured. Since absence of competition is rare for personal services, agencies should carefully consider both public and private sector resources before making a decision to pursue sole source award. Sole source procurements are improper if made only for the administrative

convenience of the agency. When the agency determines that a competitive process is **clearly** not feasible, sole source contracts may be entered into, but with strict adherence to legislatively mandated criteria.

If the contract is subject to review, services may begin the working day the contract is filed. If the contract is subject to approval, work may not begin until at least the tenth working day following, but not including, the filing date, if it is approved by OFM. Ten working days excludes Saturdays, Sundays, legal state holidays and the date the contract is filed with OFM.

Sole Source contracts are those that have not been competitively bid and should only be awarded under unusual or exceptional circumstances.

Thorough justification is required to explain the unique circumstances as part of filing with OFM.

For sole source procurement to be appropriate, the contractor must provide professional or technical expertise of such a unique nature that the contractor is clearly and justifiably the only practical source to provide the service. The justification must hinge on the unique qualifications, abilities or expertise of the consultant to meet the agency needs or the unique nature of the service. Other special circumstances may also be considered such as confidential investigations, copyright restrictions, time constraints not caused by agency delay, or sole availability at the location required.

Pursuant to RCW 39.29, sole source contracts of less than $5,000 may be directly negotiated, or agencies may choose to solicit by telephone to make the award decision.

Sole source personal service contracts and their amendments, in the amount of $5,000 to $19,999, or those that cumulatively equal or exceed $5,000 or more with the same contractor in a fiscal year, are to be filed with OFM and are subject to **review** by OFM. For institutions of higher education, this only applies when the sole source contract includes $5,000 or more in state funds.

Sole source contracts of $20,000 or more and their amendments, which independently, or when combined with other sole source contracts between the agency and the contractor during the fiscal year, are filed with OFM for **approval**. For institutions of higher education, this applies only when the sole source contract, including its amendment(s), include $5, 000 or more in state funds.

In addition, 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, are subject to **approval** by OFM. In that instance, follow the justification requirements for amendments that are greater than 50 percent of the original contract amount in Section 4.3.3.

The dollar range for filing is determined based on either the individual contract amount or a cumulative total of sole source contracts awarded to the contractor by an agency during the fiscal year. Only sole source contracts awarded to a single contractor during the fiscal year are considered in the cumulative total. Competitive personal service contracts with the same contractor, purchased service contracts or client service contracts with the contractor are not included in this cumulative count.

The amount paid to a contractor in a fiscal year is not a factor in determining the filing threshold. The maximum amount of the contract, including amendments, awarded to the contractor during a fiscal year is considered. Filing totals are based on contracts awarded by the agency.

If a sole source personal service contract is awarded to a contractor by an agency for $4,500 in one fiscal period, and it is amended by $500 in another fiscal period, the amendment is subject to filing. This is because the total amount of the sole source contract is now $5,000, even though the amount actually awarded during the fiscal year is only $500.

Note: This example does not apply to institutions of higher education since they file sole source contracts and amendments only when the contract includes $5,000 or more in state funds.

4.3.1.1 Advertising a Sole Source Contract and Sample Sole Source Legal Notice

Sole source contracts of $20,000 or more must be advertised a minimum of one day in a statewide or regional newspaper.

Personal service contracts of $20,000 or more, which the agency has determined are appropriate for sole source procurement, are to be advertised in a statewide or regional newspaper for a minimum of one day. Advertisements may also be placed in other media. The advertising requirement is based on the individual contract amount of $20,000 or more and is not a 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.

The sole source advertisement should 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 as to how an interested party may contact the agency; and
- The deadline for them to make such contact.

If the name of the proposed contractor is included in the advertisement – which is helpful but not required – the named individual or firm does not need to respond to the advertisement. A sample sole source advertisement is shown on the next page.

LEGAL NOTICE

SOLE SOURCE ADVERTISEMENT

(**Sample** Legal Notice Announcing Potential Sole Source Award for Sole Source Contracts of $20,000 or More.)

The (Agency Name) contemplates awarding a sole source contract to

_____

for the time period of _____ to _____.

(Note: Include some information on basis for sole source decision, such as follow-on nature of work, unique expertise, etc.)

The contract will be issued on or about _____.

Offerors contemplating the above requirements are required to submit capability statements detailing their ability to meet the state's requirements within five (5) business days of this announcement. In the absence of other qualified sources, it is the state's intent to make a sole source award of the contract. For further information contact:

Agency Name _____
Attention: _____
Address _____
City, State, Zip code _____

Telephone: _____
FAX: _____
E-mail: _____

4.3.1.1 Advertising a Sole Source Contract and Sample Sole Source Legal Notice – *continued*

If a formal response is received to the advertisement from other than the proposed contractor, and the response indicates the responding firm is qualified to provide the service, competitive solicitation must be conducted. If an agency can demonstrate that the proposed contractor is the only qualified and available entity to provide the service, although another firm or individual responded, the contract can be filed with OFM with complete explanation as to how this sole source conclusion was reached.

Exemptions from the advertising requirement for sole source procurements include:

- Contracts for services where selection of the contractor is based on a personal accomplishment or characteristic, such as guest speakers, performers and artists. This does not apply, however, to contracts for trainers, facilitators, etc.
- Contracts for services that will be provided entirely outside of Washington, Oregon, or Idaho and services that will be provided out of the country.
- A contract 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 that OFM determines are inappropriate for advertising based upon written request from the agency.
- Sole source contracts under $20,000.

4.3.1.2 Filing a Sole Source Contract or Amendment

Sole source contracts and their amendments must be filed with OFM in the PSCD a minimum of 10 working days prior to the proposed start date. The earliest start date then is the tenth working day after, but not including, the date of filing. Ten working days exclude Saturdays, Sundays, legal holidays and the date the contract is filed with OFM.

A sole source contract filing will include summary contract data, a signed or certified copy of the contract or amendment,

including all referenced exhibits, and justification explaining the sole source decision.

4.3.1.3 Sole Source Filing Justification

Sole source contracts and amendments subject to filing requirements must include a comprehensive explanation of the circumstances surrounding the sole source award decision.

JUSTIFICATION FOR A SOLE SOURCE CONTRACT

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. Also 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. Do not simply reiterate the services to be provided by the contractor.
2. **Other Public Resources.** Explain what effort has been taken to conclude that:
   (a) Sufficient staffing or expertise is not available within the agency, not just an agency division, to perform the service; and
   (b) 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**. Unique qualifications, abilities or expertise of the contractor to meet the agency needs and/or the unique nature of 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.

(a) *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 to provide the timelines for work to be accomplished.

(b) *Geographic Limitation* – If the proposed contractor is the only source available in the geographic area, state the basis for this conclusion and the rationale for limiting the size of the geographical area selected.

If the contract is being filed based on a cumulative sole source total of contracts awarded to the contractor in a fiscal year, include the total amount of the other unfiled sole source contracts and amendments awarded during the fiscal year to this contractor.

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 calculated to make such a determination.

5. **Sole Source Advertisement.** Sole source contracts of $20,000 or more are required to be advertised in either a statewide or regional newspaper. (See preceding Section 4.3.1.1 for additional information on the sole source advertisement.) Advertisements may also be published in other media as appropriate. The advertising requirement is based on the estimated contract amount, and is not a cumulative total of sole source contracts with a contractor in a fiscal year.

   Include the name of the newspaper in which the advertisement was published, the date(s) of the advertisement and the name(s) of those responding. If no responses are received, please indicate so. 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, explain the basis for the exemption and include a copy of 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 the source of funds.

JUSTIFICATION FOR AN AMENDMENT TO A SOLE SOURCE CONTRACT

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 terms of the original contract.
- 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.
- 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 the contract value exceeding 50 percent of the original contract amount or substantially changing the scope of work, follow the justification requirements in Section 4.3.3.

4.3.2 Filing Competitively Solicited Contracts/Amendments of $20,000 or More

Personal service contracts and their amendments, in the amount of $20,000 or more, which have been competitively solicited, are subject to either **review or approval** by OFM, depending upon the type of service or dollar amount.

OFM **review** is required for most competitive contracts in this category. However, the Washington State Legislature has taken special interest in the categories of services highlighted below and has required advance **approval** by OFM for the services when the contract is $20,000 or more. Amendments to these contracts are also subject to filing and to OFM approval.

Management Services – Sub-object Code: CA - Includes, but is not limited to, services that impact agency policy, regulatory issues, or which have broad agency or state implications. Includes services to assist management with operation or management of the agency or unit or division of the agency. Includes services that assist management with program development, implementation, coordination or program evaluation, and/or external quality review (may be mandated by the Legislature or federal funding source). Includes services that result in operational or managerial recommendations, performance audits, assessments, reports and studies, as well as studies requested by the Legislature and feasibility studies with significant policy impact. Also includes services for strategic planning, needs assessment, business process re-engineering, facilitators for focus groups or major staff functions, risk management and loss prevention, harassment and related investigations, mediation, lobbying, etc.

Management services also include design, development, and/or implementation of major agency information technology or telecommunications systems; re-engineering of major information technology systems; project management of major technology systems; quality assurance on, or evaluation of, major systems; and development of information technology strategic plans. “Major” systems for the purpose of this definition are those that have significant agency-wide or statewide impact.

Organizational Services - Sub-object Code: CA

Includes services to study, analyze or review the organizational structure, framework, or culture of the agency or divisions within the agency, and services implementing the recommendations of such a study or effort. Also included are services that provide recommendations to management on enhanced efficiencies, productivity and process improvements, and quality control in the organization.

Marketing Services – Sub-object Code: CG

Includes services to develop or implement a marketing or advertising plan or campaign; services related to marketing or promoting an agency's service or the state, as for tourism purposes; public relations or media services; and market research and development. Also includes public involvement campaigns; trade development and assistance; development of market research and customer satisfaction surveys and/or assessment of survey results; conference or trade show coordination; fund raising; and related types of services.

Communication Services – Sub-object Code: CH

Includes design, development, and/or oversight of audio/video media productions, brochures, manuals, guidelines, newsletters, display exhibits, signs, posters, annual reports, etc.; technical writing/editing; speech writing; grant writing; graphic design services; development of communication strategies; and other related services to inform the public or other governmental agencies about a subject or issue. **Does not include** services related to installation of computer system linkage and telecommunications systems, which are classified as purchased services.

Employee Training Services – Sub-object Code: CJ

Includes training provided to meet employee training needs for training provided to all or most state agency employees up to six times per year. Also includes managerial training, employee counseling services, guest speakers, and curriculum development for all types of training services. **Does not include** training that is offered to all or most state employees on a continual or recurring basis (more than six times per fiscal year), such as basic first aid, grammar review, effective writing skills, etc. which is purchased service training. **Does not include** training provided incidental to the purchase of equipment, but not included in the purchase price, technology-based distance learning options (satellite, e-learning, web

casting), or standard information technology training related to hardware or software in use by an agency. **Does not include** services to provide personal service training to local government or other public or private entities, which are classified as CZ, "Other Personal Services". **Does not include** training provided by providers directly to agency clients, which is a client service contract and classified as NB.

Recruiting Services – Sub-object Code: CK

Includes services performed by a professional search firm to assist in recruitment of a successful candidate to fill a vacant position in an agency. **Does not include** amounts paid to trade magazines, or newspapers for publishing open position announcements.

JUSTIFICATION FOR A COMPETITIVE CONTRACT

Documented justification that must accompany each filing of a competitive contract is to provide a thorough explanation of the award decision and is to be capable of withstanding public, legislative and executive scrutiny. The PSCD will dynamically display the questions you need to answer for the specific contract or amendment you are filing. They are listed here for a competitive contract filing so that you will know the information to provide as part of the filing process.

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. Also, 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 Legislature.
2. Other Public Resources. Explain how the agency concluded that:
   (a) Sufficient staffing or expertise is not available within the agency to perform the service, and
   (b) 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 all of the

following:

- Name(s) of the major, daily Washington newspaper and any other publication(s) in which an advertisement was published.
- How many solicitation documents were issued.
- Whether the solicitation or notice of solicitation was also published on the Internet.
- Name(s) of the firms responding with proposals.
- Description of the evaluation process (e.g., evaluation committee scored the responses, a selection committee made the award decision, etc.).
- The basis on which the contractor was selected. Include the strengths of this contractor that 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.

JUSTIFICATION FOR AN AMENDMENT TO A COMPETITIVE CONTRACT

For amendments to competitive contracts that have been filed, 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 terms of the original contract or solicitation document and whether the new services are within the scope of services of the original contract.
- State if 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 will be required:

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

If a contract amendment results in the contract value exceeding 50 percent of the original contract amount or substantially changing the scope of work, follow the justification requirements of Section 4.3.3 in this chapter.

4.3.3 Contract Amendments Cumulatively Exceeding 50 Percent of the Original Contract Value and/or That Substantially Change the Scope of Work of the Original Contract

Large or substantial contract amendments fall into a separate filing category subject to OFM approval. This requirement was implemented to ensure large amendments were being entered into only as appropriate and not as a means of avoiding competitive procurement. Therefore, contract amendments that singly or cumulatively exceed 50 percent of the value of the original contract, or that substantially change the original scope of work in the contract or in the solicitation document, must be filed with and approved by OFM. This applies to both competitive contracts or sole source contracts which, when amended, total $5,000 or more. For institutions of higher education, this applies only to sole source contracts with $5,000 or more in state funds or competitive contracts with $20,000 or more in state funds.

The agency will need to determine if the scope of the original contract would significantly change under the terms of the proposed amendment. Substantial changes to a contract are those that represent a significant change in quantity, duration, nature or cost of the work. If so, the changes must be submitted to OFM for approval. It may also be appropriate to procure the service under a new contract rather than to amend an existing contract if service is substantially different.

An example of a substantial change that could be appropriately executed as a contract amendment is a contract wherein 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 includes an option to extend the work at the discretion of the agency (e.g., extending a two-year contract for one additional year.)

When a personal service contract is subject to filing with OFM, most amendments to that contract are also subject to filing. Thus, amendments that add funds to a contract equal to or less than 50 percent of the original contract value are still required to be filed if the contract was filed. Amendments that are greater than 50 percent of the original contract value and/or substantially change the scope of work require filing with OFM and OFM **approval**.

The following three examples may assist in clarifying this filing category.

Example 1. A competitive contract for technical research services in the amount of $20,000 is filed by a state agency for OFM review, but not approval, and is not subject to the 10 working day filing period. A contract amendment adding $10,000 to the contract would be required to be filed with OFM, also for OFM review and is not subject to the 10 working day filing period. However, a contract amendment for $10,500 would be required to be filed with and approved by OFM, since it is greater than 50 percent of the original contract value. The amendment would also be subject to the 10 working day filing period.

Example 2. A competitive contract for technical research services in the amount of $10,000 is not subject of filing with OFM. (Competitive contracts under $20,000 do not require filing.) However, if the contract is amended by $5,001, the amendment would be subject to filing with and approval by OFM, since it is an amendment that is greater than 50 percent of the original contract value. [An amendment to this contract for $5,000, rather than $5,001, would not be subject to filing since the contract was not subject to filing and the amendment is not more than 50 percent of the original contract value.]

Example 3. A competitive contract for management consulting services in the amount of $20,000 is subject to filing with OFM, approval by OFM, and the 10 working day filing period. A proposed amendment that adds $1,000 to the contract would be subject to filing and OFM approval, since the original contract was subject to filing and OFM approval. A proposed amendment in the amount of $11,000 would be subject to filing and OFM approval for two reasons:

(a) The amendment is revising a competitive, management consulting contract of $20,000 or greater that was filed and subject to approval; and

(b) The amendment is greater than 50 percent of the original contract value for a contract that, when revised, is $5,000 or more.

Note: These competitive examples apply to institutions of higher education only if the contract includes $20,000 or more in state funds.

4.3.3.1 Filing an Amendment that Exceeds 50 Percent of the Original Contract Value and/or That Substantially Changes the Scope of Work of the Original Contract

Amendments in this category must be filed with OFM at least 10 working days prior to the proposed start date. The start date is the tenth working day after, but not including, the date of filing. Ten working days excludes Saturdays, Sundays, and legal state holidays.

4.3.3.2 Filing Justification

Contract amendments in this category are to be accompanied by a thorough explanation of the decision to amend the contract and is to be capable of withstanding public, legislative and executive scrutiny.

JUSTIFICATION FOR AN AMENDMENT EXCEEDING 50 PERCENT OF THE ORIGINAL CONTRACT VALUE OR A SUBSTANTIAL CHANGE TO THE SCOPE OF WORK

Specific Problem or Need. Identify and fully describe the specific problem, requirement or need which the amendment is intended to address and which makes the amendment necessary. Include an explanation as to how the agency

determined the services under the proposed amendment are critical or essential to agency responsibilities or operations and/or whether the services are mandated or authorized by the Legislature.

Other Public Resources. Explain how the agency concluded: (a) that sufficient staffing or expertise is not available within the agency, not just within an agency division, to perform the services, and (b) that other governmental resources (local, state, or federal agencies) external to the agency, are not available to perform the services more efficiently or more cost effectively.

Procurement Method. State whether the original contract was competitively procured or awarded as a sole source, when the original contract was awarded, and the cumulative dollar amount of the original contract and any subsequent amendments prior to this amendment.

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 or solicitation document.

Changes Since Award. Explain why the services under the proposed amendment were not included in the terms of the original contract or in the solicitation document. Include any conditions that have changed since contract award and other information that supports the decision to amend the contract.

Contractor's Qualifications. Provide an explanation of the contractor's qualifications, abilities or expertise to meet the agency's specific needs for the services under the amendment.

Reasonableness of Costs. Include how the agency determined that the costs, fees or rates negotiated for the amendment are fair and reasonable, since competitive bids were not received for the services under the amendment. Generally, the rates should be the same as those in the original contract. If they are not, include justification for any increased pricing.

4.3.4 Emergency Contracts

Another exception to competitive procurement is an emergency contract, which is awarded to resolve an emergent 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 are post-earthquake assessments and evaluations, fire damage consultation, personnel investigations of a critical and time-sensitive nature.

Emergency contracts in the amount of $5,000 or greater, and their amendments, must be filed with OFM. Institutions of higher education file these contracts only when the contract includes $5,000 or more in state funds.

4.3.4.1 Emergency Contract Filing Justification

Documented justification that must accompany each emergency filing is to provide a thorough explanation of the emergency and is to be capable of withstanding public, legislative and executive scrutiny.

JUSTIFICATION FOR AN EMERGENCY CONTRACT

1. **Nature of Emergency**. Explain the nature of the emergency and all relevant circumstances associated with the emergency.
2. **Health or Safety Threat**. Describe the threat to the health or safety of individuals, property, or essential state functions if immediate action was not taken. Provide an estimate of the potential material loss or damage.
3. **Alleviate or Eliminate Emergency**. Explain how the services of the contractor alleviated or eliminated the emergency. Describe the consequences of not taking the emergency action and the risks associated with inaction.
4. **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.
5. **Reasonableness of Costs**. Explain how the agency concluded that costs negotiated were fair and reasonable since competition was not conducted.

JUSTIFICATION FOR AN AMENDMENT TO AN EMERGENCY CONTRACT

Amendments to emergency contracts are rare. If the emergent contract conditions still exist, OFM will process the amendment as an "emergency" amendment with the same three working day requirements as a new emergency contract. If the conditions have been alleviated and are not as severe, OFM may designate the amendment as a sole source contract amendment with the required 10 working day period prior to start of work. The emergency 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 terms of the original contract and whether the new services are within the scope of services of the original contract.
- 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.

4.4 OFM Response to Filings

The agency should expect to receive either a written or oral response from OFM within 10 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 totally incomplete and lacking in content, OFM will return it to the agency to be revised and re-filed.

Once OFM has completed processing of the filing, the agency will receive electronic verification of OFM's decision from the PSCD.

If OFM anticipates disapproval, the agency will be notified promptly.

The decision to disapprove a contract will be in writing from OFM through the PSCD and will clearly state the reason for disapproval.

4.5 Late Filing

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 10 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 are filed more than three business days after the start of work or execution of the contract.

An explanation is to be submitted as part of the filing justification stating the reason for the late filing. Also include an explanation as to how a similar situation could be prevented in the future.

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. OFM will not consider the filing formally reviewed or approved by OFM.

4.6 Reporting of Unfiled Personal Service Contracts

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 fiscal year will automatically be included on the list. Those personal service contracts and amendments that were not subject to filing are to be reported to OFM no later than the end of the fiscal year, in which the contract was awarded. This report is not to include contracts that are exempt under RCW 39.29.040, and further explained in Section 4.9 of this chapter.

Personal Service contracts that are not subject to filing with OFM are reported through the Personal Service Contract Database (PSCD).

Since June 11, 1998, filing requirements for state agencies and institutions of higher education have been different, based on fund source. Therefore, the annual report requirements are also different, as shown below.

State agencies report competitively awarded personal service contracts and amendments in the amount of $5,000 - $19,999. (Exceptions are amendments to competitive contracts that are greater than 50 percent of the original contract value, which may have been filed in this dollar range, and are therefore not required to be reported.)

Institutions of higher education report:

- Sole source contracts and amendments of $5,000 or more that are funded by sources **other than state funds, or that include less than $5,000 in state funds.**
- Competitive personal service contracts and their amendments in the amount of $5,000 - $19,999, **for all fund sources**. (Exceptions are amendments to competitive contracts that are greater than 50 percent of the original contract value, which may have been filed in this dollar range, and therefore are not required to be reported.)
- Competitively awarded contracts of $20,000 or more and their amendments funded by sources **other than state funds, or that include less than $20,000 in state funds**.

Reported contract information shall be submitted to OFM through the Personal Service Contract Database (PSCD). It is recommended that information on the "reported" contracts be entered into the PSCD as the contracts are awarded or amendments executed, rather than compiling and entering all the data at the end of the fiscal year.

Information for the annual report is to be submitted to OFM in the format prescribed by OFM. At a minimum, the following information should be maintained:

- Agency Number;
- Agency Contact Names;
- Name, address, and Taxpayer Identification Number (TIN) of the contractor;
- Type of contract (new or amendment);
- Contract or amendment start and end dates;
- Dollar value of the original contract or amendment; if an amendment, the revised contract total;
- Fund source;
- Description of the scope of work;
- Procurement type, (e.g., sole source, competitive, or emergency;) and
- Employment status of contractor, whether a current or former state employee.

4.7 Annual Contract Procedures Report

RCW 39.29.110 requires state agencies that have awarded or amended personal service contracts and client service contracts during a calendar year to provide a report to OFM detailing the procedures the agency employed in entering into, renewing, and managing these contracts. The report shall apply to state agencies that have entered into or renewed (amended) personal service contracts between January 1 and December 31 of each year.

The Contract Procedures Report is a new requirement effective January 31, 2004.

OFM will notify agencies of the information needed in the report to satisfy this requirement. The Contract Procedures report is due to OFM by January 31 of each year.

The following items will be required as part of submitting the Contract Procedures Report:

1. **Contract Procedures**. A copy of, or a web site link for, the agency's procedures on personal service contracts. The same information is required for client service contracts.

   If an agency does not have internal contract procedures in place, but the agency utilizes the policies of the State Administrative and Accounting Manual, Sections 15.10, 15.20 and 15.30 for personal service contracts, and Section 16.10 for client services, those policies should be referenced.

2. **Contract Totals**. OFM has agency totals for personal service contracts. Therefore, if the agency has filed and reported its personal service contracts, as required, these totals do not need to be provided for personal services. If not, the agency needs to file or report the required contracts as soon as possible. Contract totals for client service contracts awarded during the calendar year period of January through December do not need to be provided to OFM. Include the number of and total dollar value of the contracts awarded. Do not submit a list of the client service contracts, just the totals.

4.8 Quarterly Report on Architectural/Engineering Services

Agencies including institutions of higher education that award architectural and engineering (A/E) agreements must submit quarterly reports to OFM on the A/E agreements and addenda awarded during the period. The reports are due the 15th of each month following the end of the quarter (e.g., October 15, for the period July through September; January 15, for the period October through December, etc.) If the 15th of the month falls on a Saturday, Sunday, or state holiday, the report will be due the next working day. The Department of General Administration submits the report on behalf of the agencies for which they contract.

Reported architectural and engineering contracts and amendments are to be entered into the OFM Personal Service Contract Database. The entries in the database may occur at the time of contract award or addendum execution, rather than at the end of the quarter.

Quarterly reports for architectural and engineering services must include the following information:

- Agency number;
- Agency contact name(s);
- Name, address and TIN of the contractor;
- Whether the entry is a new agreement or an amendment;
- Dollar amount of the agreement or the amendment;
- Description of the project;
- Whether the contractor or agent is a current or former state employee; and
- Whether the contract was competitively procured per Chapter 39.80 RCW.

4.9 Exemptions from Competition and Filing Requirements

When a personal service contract falls under one of the categories described below, it is exempt from the competitive procurement and filing requirements of Chapter 39.29 RCW. However, agencies may establish internal policies or procedures that would require competition of these categories

of contracts in certain instances. Funding source requirements may also subject a contract to competitive bid. If in doubt about whether a contract falls under one of the exemptions, contact OFM or your agency's Assistant Attorney General.

4.9.1 Contracts Totaling Less Than $5,000

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

- Competition is not required for personal service contracts under $5,000, but it is advisable to use a competitive process whenever possible.
- Agencies are to track personal service contracts under $5,000, since sole source contracts awarded to a contractor are considered cumulatively by fiscal year for filing purposes. When the cumulative total of sole source personal service contracts and amendments awarded to a contractor in a fiscal year reaches $5,000 or greater, the contract or amendment that the brings the total to, or over, the $5,000 threshold is subject to filing, regardless of its individual amount. Any subsequent sole source contracts and amendments awarded to that contractor in the fiscal year are, of course, also subject to filing.

Contracts competitively awarded to the contractor in the fiscal year are not included in this count.

4.9.2 Contracts Subject to Tariff

This exemption applies to contracts awarded to companies that furnish a service where the tariff is established 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.

4.9.3 Intergovernmental Agreements

This exemption applies to contracts between Washington State agencies or between a Washington State agency and either a unit of local government, another state or the federal government or an Indian Tribe recognized by the federal government. These are called intergovernmental or interagency agreements, and they are governed by the Interlocal

Cooperation Act, Chapter 39.34 RCW.

A sample Interagency Agreement that is used between state agencies is included as Appendix B to this guide.

4.9.4 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 qualified applicants as services are required. Standard fees may include hourly or daily rates or similar fee-for-service rates. Examples: 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.

The intent of the exemption is to allow multiple qualified firms that have agreed to a rate established by the agency in advance to provide the same service, generally on a rotating basis, in order to ensure equal and fair distribution of services. Annual advertising is recommended as an effective way to guarantee equal opportunity to qualified entities when contracting under this exemption.

4.9.5 Collaborative Research

This exemption applies to contracts for services that are necessary for conduct of collaborative research where prior approval is granted by the funding source. The exemption may be used when an agency is applying for research or grant funds and names a firm or individual in the written grant application or proposal to perform specific services. Upon approval from the funding source and receipt of funds, the resultant contract with the firm or individual named in the grant application is not required to be filed with OFM, nor does it require approval or review by OFM.

This exemption is only to be used when the agency initiates the activity by applying for specific funding and names the contractor(s) in the application. The exemption is not applicable when the funding source initiates the activity and requires the agency to use a specific contractor. In that instance, the contract is a sole source, and the sole source advertisement may be waived.

4.9.6 Client Services

Personal services provided directly to agency clients are also exempt. RCW 39.29.006(2) defines client services as:

> *"…services provided directly to agency clients including, but not limited to, medical and dental services, employment and training programs, residential care, and subsidized housing."*

Clients are members of the public, external to state government, who have social, physical, medical, economic or educational needs. These individuals may need government assistance to meet their needs. **Client service contracts are those entered into for professional or technical services with a contractor for delivery of direct services to agency clients.**

More detailed information on client service contracts is available in OFM's "Guide to Client Service Contracting" available on the OFM website.

Clients, from the agency viewpoint, are those individuals the agency has statutory responsibility to serve, protect or oversee. For example:

- Clients of the Department of Social and Health Services include nursing home patients, welfare recipients, institutionalized individuals, foster children, and children in need of therapy.
- Clients of the Department of Veterans Affairs include veterans and widows of veterans.
- Clients of the Department of Corrections include inmates.
- Clients of the Department of Labor and Industries include injured workers and private employers.
- Clients of the Employment Security Department include unemployed and displaced workers and veterans.
- Students at institutions of higher education may be considered clients for contracts where the contractor provides direct services to students, e.g. counseling, guest lecturers for students and/or the public, student workshops, etc.

Examples of the types of services provided to state agency clients are:

- Drug abuse treatment
- Job counseling

- Medical, dental and mental health treatment
- Foster care
- Job training programs
- Physical and occupational rehabilitation
- Day care services

The contractor must be providing **direct service** to the client to be designated a client service contract. Direct service means the contractor is in direct contact with individual clients 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.

For some state agencies, where identifying clients is more difficult, it may help to review the agency's implementing statute in the Revised Code of Washington where the mission and duties of the agency are set forth.

Typically, clients are not considered to be:

- Providers of services (For example, if a state agency contracts with a trainer to provide training to contractors of counseling services, the contract with the trainer is not a client service)
- State agency staff (State agencies that only serve other state agency staff typically do not have client service contracts).
- Businesses (When state agencies contract to assist businesses to increase business opportunity and earn more money, those services are not considered client services).

Contracts directed broadly to the general public are not considered client service contracts. Client services contracts must provide services to client a group(s).

Client service contracts are to be processed in accordance with each agency's internal controls. Good business practice suggests that agencies use a competitive process to award these contracts, even though they are exempt from the competitive procurement requirements of Chapter 39.29 RCW. Funding source requirements may subject a client service contract to competitive bid.

In instances where the client service designation is not clear, it is advisable not to categorize the contract as such.

4.9.7 Architectural and Engineering Services

Contracts for architectural and engineering services are exempt from personal service contract procurement and filing requirements, since they are subject to the competitive acquisition requirements of Chapter 39.80 RCW. You may contact the Department of General Administration, Division of Engineering and Architecture, at (360) 902-7272 for more information about contracting for these services.

However, state agencies are required to submit quarterly reports to OFM on architectural and engineering agreements and amendments awarded for the three-month period, per RCW 39.80.070. The reports are to be submitted to OFM through the Personal Service Contract Database.

4.9.8 Expert Witness Contracts

Expert witness contracts are those awarded when a subject matter expert is requested to testify as an expert witness for the purpose of litigation. These contracts may also include case consultation, research, legal services, or other related activities, but the purpose of the contract ultimately must include the possibility of expert testimony if the case goes to trial. An expert witness is someone who is a subject matter expert, or has particular knowledge or skills related to a subject. It is not necessarily any person who might be called to testify in relation to a specific case. This does not include lay witnesses.

4.9.9 Bank Supervisory Agreements

Contracts for bank supervision are authorized by RCW 30.38.040. This exemption applies to 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.

4.9.10 Interpreter Services

Contracts for interpreter services and interpreter brokerage services awarded by the Department of Social and Health Services on behalf of limited English speaking or sensory-impaired applicants and recipients of public assistance are exempt.

4.9.11 Exemptions by the Director of OFM

RCW 39.29.011(5) authorizes the Director of OFM to exempt specific contracts or classes or groups of contracts from the competitive procurement process, when it has been determined that such a process is not appropriate or cost-effective. This exemption is not meant to be used in lieu of filing sole source contracts. It is intended for exceptional or unusual circumstances that may preclude the use of the standard competitive and filing processes.

If an agency concludes that competitive procurement is not appropriate or cost-effective for a particular category of service or type of contract, the agency may request OFM to exempt that category of contracts from the competitive procurement and filing requirements.

The agency should forward a written request to the Director of OFM, well in advance of the proposed contract start date. At a minimum, the request must include:

- A description of the type of service for which an exemption is requested;
- An explanation as to why an exemption is considered appropriate;
- Reason(s) why competitive procurement is not appropriate or cost-effective; and
- An explanation of the effect or impact of not having an exemption.

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

4.10 Civil Penalty

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 is responsible for compliance with the requirements. A state officer or employee who knowingly violates Chapter 39.29 RCW is subject to a civil penalty of $300.

A contractor who knowingly violates Chapter 39.29 RCW, in seeking or performing work under a personal service contract, is subject to a civil penalty of $300 or 25 percent of the amount of the contract, whichever is greater.

The State Auditor is responsible for auditing violations of Chapter 39.29 RCW, and the Attorney General is responsible for prosecuting violations.

4.11 Filing Charts

The two filing charts on the next pages summarize the current personal service contract filing requirements – one is applicable to state agencies only and the other is applicable to institutions of higher education only.

PERSONAL SERVICE CONTRACT FILING CATEGORIES FOR STATE AGENCIES
(*Exclusive* of Institutions of Higher Education)

PERSONAL SERVICE CONTRACTS/AMENDMENTS	DOLLAR THRESHOLD FOR FILING	OFM REVIEW OR APPROVAL	FILING PERIOD
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 (not included in the categories below)	$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	$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 constitute a substantial change in the scope of work.	$5,000 or more (Contract, when amended, equals $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 >50% amendment category.

NOTES:
1) Subsection 15.30.10.e, lists certain types of amendments that are not subject to filing.
2) Subsection 15.30.90.a, lists the category of contracts that are not filed with OFM, but are submitted on an annual report to OFM at the end of each fiscal year.

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

PERSONAL SERVICE CONTRACTS/AMENDMENTS	FUND SOURCE	OFM REVIEW OR APPROVAL	FILING PERIOD
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.) $ 5,000 - $19,999 ($5,000 or more state funds)	State Funds* $5,000 or more	OFM Review **	10-working day advance filing
	Non-State Funds	Filing not required	N/A
$20,000 or more ($5,000 or more state funds)	State Funds* $5,000 or more	OFM Approval	10-working day advance filing
	Non-State Funds	Filing not required	N/A
EMERGENCY Contracts and Amendments $ 5,000 or more ($5,000 or more state funds)	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	Filing not required	N/A
COMPETITIVE Contracts and Amendments (not included in categories below). $20,000 or more ($20,000 or more state funds)	State Funds * $20,000 or more	OFM Review **	Work may start on or after the working day filed with OFM.
	Non-State Funds	Filing not required	N/A
COMPETITIVE Contracts and Amendments for: Management Consulting, Organizational Development, Marketing, Communications, Employee Training and Employee Recruiting $20,000 or more ($20,000 or more state funds)	State Funds * $20,000 or more	OFM Approval	10-working day advance filing
	Non-State Funds	Filing not required	N/A
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. Contract, when amended, equals $5,000 or more ($5,000 or more state funds if Sole Source and $20,000 or more state funds if Competitive)	State Funds * Sole Source, $5,000 or more Competitive, $20,000 or more	OFM Approval	10-working day advance filing
	Non-State Funds	Filing not required	N/A

* 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: 1) $5,000 for sole source and emergency contracts, or 2) $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 >50% amendment category, subject to fund source.

NOTES: 1) Subsection 15.30.10.e, lists certain types of amendments that are not subject to filing. 2) Subsection 15.30.90.a, lists categories of contracts that are not filed with OFM, but are submitted on an annual report to OFM at the end of each fiscal year.

CHAPTER 5

Competitive Procurement Methods

5.1 Overview of Competitive Methods

RCW 39.29, "Personal Service Contracts", requires that personal services be competitively procured, with few exceptions. Competition is to be open, fair and objective and should be conducted carefully to ensure those aims are achieved. The following chart provides an outline of competitive methods used to procure personal services depending upon the estimated dollar amount of the proposed contract. Please refer to the sections in this chapter for more detailed information on the requirements for competition in each dollar range.

DOLLAR THRESHOLD	COMPETITIVE PROCESS	PERSONAL SERVICES COMPETITIVE PROCUREMENT - MAJOR ACTIVITIES
$1 - $4,999	Not Required	• Seeking competition is always recommended, though not required for this dollar range. • Telephone calls can be made to firms or individuals, describing the services desired and requesting price, schedule and qualifications to perform. • Written contract is entered into upon selection of contractor, regardless of dollar amount. • Sign contract and begin work.
$ 5,000 - $19,999	Informal Competition--also called "Evidence of Competition"	• Prepare written document/letter including, at a minimum: description of services required, project schedule, request for consultant's qualifications, request for costs or fees and due date for responses. • Send to a minimum of three firms/individuals. May be faxed or e-mailed and responses may be faxed or e-mailed back to agency to expedite processing. • Evaluate responses and make award decision. • Negotiate contract. • Document for file: names of firms solicited; copy of solicitation document; copy of bids received; basis for award decision; copy of contract. • Sign contract and begin work.

DOLLAR THRESHOLD	COMPETITIVE PROCESS	PERSONAL SERVICES COMPETITIVE PROCUREMENT - MAJOR ACTIVITIES
$20,000 or more	Formal Competition	• Prepare formal solicitation document, e.g., Request for Proposals (RFP) or Request for Qualifications/Quotations (RFQQ). Include all requirements in order for proposers to understand what the agency needs and how the agency will evaluate responses. • Publish legal notice in major daily newspaper in Washington State to notify firms of upcoming solicitation. Develop mailing list from firms responding to notice, internal agency listings, etc. • Post solicitation document on agency website (optional). • Develop score sheets for use by evaluators. • Issue RFP or RFQQ to a minimum of 6 firms/businesses. Agencies may also just send a notification to 6 or more businesses that the solicitation document is posted on their web site and can be accessed there. *(NOTE: New requirement to send to a minimum of 6 effective 7/1/04.)* • Conduct pre-proposal conference, if required in RFP or RFQQ, and issue minutes. • Provide answers to bidders' questions via an addendum to all who receive the RFP or RFQQ. Or advise those who download the RFP or RFQQ from the web site to check back for any addenda that may be posted. • Date and time stamp proposals received by the due date. Electronic proposals will have the date and time automatically noted. • Evaluate proposals strictly against criteria set forth in the RFP or RFQQ and score. Must use a minimum of 3 evaluators for scoring and score proposals using score sheets. • Schedule and conduct oral interviews of top finalists, if desired. • Determine final scoring and select apparent successful contractor. • Notify successful and unsuccessful firms. • Negotiate contract with apparent successful contractor. • Conduct debriefing conferences with unsuccessful proposers, if requested. • File contract with OFM. (*NOTES: 1) Institutions of higher education will need to file only if the contract contains 20K or more in state funds. 2) Competitively bid contracts for management/organizational services (CA), marketing (CG), communication services (CH), employee training (CJ), and employee recruiting services (CK), are subject to approval by OFM and the ten-working day filing period before the contractor can begin work. Other competitively awarded categories of contracts may be effective the date filed with OFM and work may begin then.)* • Sign contract, contingent upon OFM approval for those contracts subject to OFM approval, and begin contract work.

5.2 Number of Consultants to Solicit

Proposals are to be solicited from a reasonable number of consultants. A "reasonable" number is a judgment call, and is determined by the characteristics of the procurement, i.e. complexity, cost, number of available qualified consultants. Enough consultants should be solicited to assure fair and open competition and to increase the likelihood of receiving a number of responsive proposals. Often less than half of the firms that receive a solicitation document actually respond, so it is advisable to distribute solicitations broadly.

When using the informal competitive process called “evidence of competition,” for contracts ranging from $5,000 to $19,999, a minimum of three firms must be contacted. If fewer firms are contacted, written documentation must be prepared and maintained by the agency that explains why more firms were not contacted.

When using formal competition for procurements of $20,000 or more, a minimum of six firms must be directly contacted. Agencies must document if fewer than six firms were directly contacted regarding the solicitation. You must advertise for contract services in this dollar range as one method of acquiring names of interested firms. However, you may also contact other agencies and review professional publications and telephone books for consultant names. For many types of services, availability of firms is much higher than six and distribution of the solicitation should be made far more broadly. All who request a copy of the solicitation document must be sent or issued one.

5.3 Informal Competition – Evidence of Competition

Informal competition is used for personal services of less than $20,000. It's faster than formal competition but still requires a fair, impartial evaluation and written documentation of the process.

For personal service contracts estimated to be $5,000 or greater but less than $20,000, the agency may use the informal procurement process known as "evidence of competition." At a minimum, evidence of competition includes the following steps:

1. Locate the names and addresses of multiple firms or individuals that would be qualified to provide the service. "Multiple firms" is defined as a reasonable number of consultants considering such factors as time, cost and availability of qualified consultants. In most instances, this means at least three consultants; however, more are encouraged. In the event less than three firms are contacted, an explanation must be placed in the file to document why more firms were not notified. Agencies should seek participation from certified minority- and women-owned firms by including them on any bidder list as well. If you need assistance locating names, you may contact the Office of Minority and Women's Business Enterprises at (360) 753-9693 or at their web site: http://www.omwbe.wa.gov/.
2. Prepare and issue a solicitation document. The solicitation document can be in any appropriate written format, such as a "Letter to Request Bids" or e-mail. A sample letter that may be used for Evidence of Competition appears at the end of this section. At a minimum, the document should include a description of the type of service required, the proposed project schedule, a request for information on the consultant's qualifications, a request for the consultant's cost or fees, and the due date, time and location to submit responses. The solicitation can be sent electronically, by facsimile or through the mail. This informal competitive process is intended to be expeditious; however, agencies should provide enough time for firms to submit complete responses.
3. Document the time and date written responses are received. If the responses are forwarded electronically or by facsimile, the date and time are automatically noted.
4. Evaluate the responses (including costs or fees) and determine which consultant's proposal most closely meets the requirements of the solicitation. Enter into contract negotiations with the top finalist.

5. Prepare the contract document and acquire signatures of both parties.

6. Thoroughly document the entire selection and award process. Prepare auditable documentation of the competitive process and maintain it in the contract file. Such documentation should include: the names of the firms contacted and/or solicited; a copy of the solicitation document; copy of the bids received; an explanation of the evaluation and basis for the award decision; evaluation process used; and a copy of the contract.

7. Report the contract to OFM in the Personal Service Contract Database (PSCD). Contracts valued between $5,000 and $19,999, which have been awarded under "evidence of competition" are not required to be **filed** with OFM, but are subject to **reporting** per OFM requirements. (See Chapter 4 for more detailed information on the filing and reporting requirements.)

EVIDENCE OF COMPETITION - INFORMAL SOLICITATION
(For personal service contracts of $5,000 to $19,999,
send to a minimum of 3 qualified firms/individuals)

LETTER TO REQUEST BIDS

Date _____

Bidder's Name _____
Bidder's Address _____
_____

Dear:_____

(Agency Title) is soliciting proposals to provide (include a description of the service(s) required and project schedule).

The period of performance of any contract awarded as a result of this Letter to Request Bids is tentatively scheduled to begin on or about (date) and be in force through (date) with possible amendments extending the period of performance.

It is anticipated that any contract awarded under this solicitation shall be in an amount not to exceed ($). (Agency Title) does not anticipate the selected contractor's involvement beyond (date). However, if (Agency Title) determines it is necessary to increase the contractor's involvement, (Agency Title) may amend any awarded contract to increase the contractor's involvement. Such amendment, if any, to increase or decrease the dollar value and extend the period of performance shall be at the sole discretion of (Agency Title).

The bidding is open to individuals or organizations, which meet the following minimum criteria:

- Bidder must be licensed to perform work in Washington State.
- Bidder must have a minimum of (#) years of experience providing (description of services).
- Bidder musts have at least three (3) non-Bidder owned customer references for whom the Bidder has provided similar services during the past thirty-six (36) months preceding the bid due date.
- Bidder must be insured as follows: (insurance requirements).

Bidders who do not meet these minimum qualifications, shall be deemed to be non-responsive and will not be evaluated and no score will be assigned.

The proposal is to be brief but should include:

1. Experience on comparable projects
2. Staff qualifications
3. Names, addresses and telephone numbers of three business references
4. Project work plan
5. Schedule to accomplish the project
6. Costs or fees

Proposals will be evaluated by (Agency Title) based on the response to the information requested above. All six items must be addressed for the proposal to be considered responsive. The deadline for submission of responses is (time) local time in (city name), Washington on (day and date). LATE BIDS WILL NOT BE ACCEPTED AND WILL BE AUTOMATICALLY DISQUALIFIED FROM FURTHER CONSIDERATION. TIME EXTENSIONS WILL NOT BE GRANTED.

Proposals are to be mailed, faxed, e-mailed or hand-delivered to:

Agency Name
Project Manager's Name
PO Box 4
Olympia, WA 98504-
Phone: (360)
Fax: (360)
E-Mail:

Bidders assume the risk for the method of delivery chosen. (Agency Title) assumes no responsibility for delays caused by any delivery service.

The following weights will be assigned for bid evaluation purposes:

Experience/Staff Qualifications	_____ points
References	_____ points
Cost	_____ points

(Agency Title) reserves the right at its sole discretion to reject any or all bids for any reason whatsoever prior to the execution of a contract. This Letter to Request Bids does not obligate (Agency Title) to contract for the services specified herein. The final selection, if any, will be the bid, which in the opinion of (Agency Title) best meets the requirements set forth in the Letter to Request Bids and is in the best interest of the state of Washington. (Agency Title) is not obligated to select the lowest priced bid. (Agency Title) shall not be responsible for any costs associated with a bidder's preparation of a bid in response to this Letter to Request Bids.

In submitting a bid in response to this Letter to Request Bids, the bidder agrees to accept the terms set forth in this Letter to Request Bids. The selected contractor will be required to sign a personal service contract, including General Terms and Conditions. Under no circumstances is the bidder to submit its own standard contract terms and conditions in response to this Letter to Request Bids.

Any requests for information about this project are to be directed to the Project Manager named above.

Thank you for considering this solicitation.

Sincerely,

NOTE: Many other provisions may be included in the evidence of competition letter as appropriate.

5.4 Formal Competition – Request for Proposals and Request for Qualifications and Quotations

5.4.1 Advertisement Required

Personal service contracts estimated to be $20,000 or more are subject to formal competition. As part of that process, agencies are required to publish a notice of the solicitation in a statewide daily newspaper. Newspapers that satisfy this requirement include the Daily Journal of Commerce, the Seattle Times, Seattle Post Intelligencer, The News Tribune and the Wall Street Journal.

Agencies may also post the procurement on an agency Internet website or advertise in a professional publication to increase awareness of the procurement. These steps augment the mandatory publication in a statewide newspaper requirement, but cannot be used in lieu of the newspaper publication. Agencies are encouraged to contact the Office of Minority and Women Owned Business Enterprises and use bidder's lists to increase participation. The agency must contact multiple firms directly in writing, either through electronic mail, regular mail or similar means, to satisfy the requirement of direct notification to consultants regarding the solicitation.

5.4.2 Issue Formal Solicitation Document

Another requirement is issuance of a Request for Proposals (RFP) or other formal solicitation document. The RFP is the procurement document most frequently used in state government to procure personal services. This document not only serves as the basis for the consultants to respond but, as importantly, serves as the foundation for the eventual contract. A well-written, well-considered RFP will help ensure responsive proposals and positive results. The RFP must provide clear, unambiguous statements of project goals and objectives with enough specificity for potential proposers to understand what the agency needs and wants, instructions for submitting the proposals and criteria for proposal evaluation.

The competitive solicitation document or notification regarding the document must be issued or sent directly to multiple firms or businesses. "Multiple" firms means a reasonable number of consultants depending on the type of services being solicited.

Six or more firms or businesses must be contacted as part of this formal competitive process. If fewer than six firms or businesses are known or available, documentation is to be placed in the file as to how the agency came to that conclusion.

5.4.3 Elements of an RFP

Primary information to include in an RFP is explained below:

Project Background and Scope of Work–Provide sufficient information on the background of the project, specific problem or need, the primary objectives and scope of work to ensure proposers understand what is needed and can submit viable proposals.

The scope of work looks for results–it is performance oriented, not process oriented. While the scope of work must be communicated as comprehensively as is feasible, it must also allow the consultant latitude in describing how the results will be achieved. The statement of work tells "what" must be done, the consultant responds with "how" to do it.

It is important to emphasize that performance requirements must be results-oriented. Results-oriented performance is the basis for determining, later in the contract administration process, whether the agency is receiving the quality service for which it is paying. One way to ensure successful outcomes is to break each major task down into smaller components or performance measures. This can serve as an incremental approach to building a performance based contract.

The language in the project scope of work should be simple and direct. The scope of work will be read very carefully and scrutinized by prospective proposers in preparation of their offers. Use the words "will" or “must” to indicate that a future specific action is required to be done. The consultant is instructed to do or not to do something in a way that is active rather than passive. The term “shall” has been deemed by some as meaning “may”. Therefore, it is preferable to use the terms “will” or “must”.

Definitions–Definitions should be included for all special terms and phrases used within the RFP. The definitions must clearly establish what is meant, in order to avoid misunderstanding on the part of the reader.

State's Role–State-furnished facilities, equipment, information and services, if any, must be clearly stated, as the responses of prospective proposers may be contingent upon what the agency furnishes. If the agency will charge the contractor for use of equipment or facilities, that information needs to be conveyed in the procurement document.

Funding–Budgetary constraints usually exist on any state project. The agency determines whether to disclose in the RFP the amount of available funds allocated to the project. Provided the RFP is well written and thoroughly descriptive of the project, the consultant should be able to determine a reasonable level for fees.

Some agencies include the funding information in the RFP as standard practice. Prospective contractors can more readily assess the scope of the project by looking at this maximum value. Knowing the project budget assists consultants in deciding what course to take in developing methodology. However, consultants will likely bid the contract at or just below that price.

Minimum Qualifications of Proposers- Minimum qualifications are determined by the state agency and program based on requirements applicable to the contracted service. Such qualifications may include:

- Experience providing the service.
- Staff credentials and expertise.
- Capabilities to meet service delivery, program management, and contract administration requirements.
- Other special requirements such as the ability to provide culturally relevant services, in languages other than English when necessary; physical presence or capacity to deliver services in specific geographic locations; and other qualifications necessary to perform the contract according to agency specifications.

Project Schedule–Agencies should include realistic dates for project completion. Consultants should be expected to design methodology in keeping with the real needs of the agency rather than to design for an artificial time frame. In some instances an agency may want to include only critical dates and let the proposer suggest the actual work schedule.

Other elements that are frequently included in the RFP are:

- Identification of an RFP Coordinator as the sole contact person.
- Complete instructions for submitting proposals and due dates for responses.
- Mode and frequency of consultant reporting to agency management under the contract.
- Method and schedule of contract payment.
- Notice of option to extend contract performance, if applicable.
- Notice of option to amend the contract if additional funds become available.
- Insurance requirements.
- Ownership of final product.
- Criteria for evaluating proposals.
- Copy of a sample personal service contract.
- Copy of agency's general terms and conditions for contracting.
- Debriefing procedure.
- Public disclosure requirements.
- Protest procedures established by the agency.
- Applicable exhibits.
- Certifications and Assurances.

Sample RFP Format–Please refer to Appendix C for a sample Request for Proposals. The terms in this sample represent a fairly standard approach to a solicitation document.

Other RFP Elements–RFPs may include many provisions appropriate to the project, which are not included in the sample RFP, Appendix C. Some RFPs require the proposer to respond with a "Letter of Intent to Bid," which provides the agency an estimate of the number of responses to expect. RFPs may require that the proposers be assigned bidder codes in order that a "blind" evaluation may be conducted. These and many other requirements may be included in an agency's solicitation document. The agency should determine the value of these requirements and that should be included in the final RFP.

5.4.4 Typical RFP Schedule

The following sample schedule of sequential, primary activities of an RFP process is provided as a guide in developing your procurement schedule. A complex procurement can take much longer, but a simple procurement could be accomplished in less time.

RFP ACTIVITY FOR PROJECTS VALUED AT $20,000 OR MORE	SAMPLE SCHEDULE
1. Develop a detailed need statement. 2. Draft the RFP. 3. Coordinate review of the draft RFP with agency staff. 4. Develop a schedule for the RFP. 5. Make arrangements for the pre-proposal conference (used for more complex procurements). 6. Prepare legal notice of forthcoming RFP and publish in newspaper(s). 7. Post on website(s) as desired. 8. Compile mailing list. 9. Complete final RFP document. 10. Select RFP evaluators. 11. Draft scoring sheets to be used by evaluators.	Weeks 1 – 2
12. Issue the RFP to all interested parties. 13. Document all telephone and written inquiries regarding the RFP. 14. Prepare agenda for the pre-proposal conference. Include any questions regarding the RFP asked to date.	Weeks 3 – 4
15. Conduct pre-proposal conference. 16. Send addendum to the RFP including questions and answers from the pre-proposal conference or submitted via e-mail or phone.	Weeks 5 – 6
17. Accept proposals until deadline for submission. 18. Determine responsiveness of proposals. 19. Evaluate written proposals; conduct oral interviews, if needed. Make award decision. 20. Obtain internal agency review and approvals for award. 21. Announce apparent successful contractor. 22. Notify unsuccessful proposers.	Weeks 7 – 8
23. Negotiate contract. 24. Conduct debriefing conferences, if requested. 25. Conduct bid protest review, if required. 26. Finalize contract document.	Weeks 9 – 10
27. File contract, if required, with OFM. Ten working days filing period is required for management consulting/organizational services (CA), marketing (CG), communication service (CH), employee training (CJ), recruiting services (CK). Other categories of contracts may be effective the date filed with OFM. 28. Sign contract and begin work.	Weeks 11 - 12

5.4.5 Proposal Preparation and Submission Instructions

The RFP should contain instructions on how to prepare the proposal. Specifying a standardized format for responses will ease evaluation by the agency. Consultants should understand that failure to follow prescribed requirements and to submit requested information may result in rejection of the proposal as non-responsive.

RFPs often require that proposals be divided into three major sections with the following information:

Technical Proposal – *What is to be Done and How?*

The technical proposal should contain an explanation of how the consultant plans to approach and conduct the work and the steps to be taken to successfully complete it.

Consultants are to demonstrate that they understand both the magnitude and the importance of all elements of the work, and their proposal should present a clear plan to accomplish the work. Consultants must be advised that a mere repetition of information from the project scope of work section will not be considered responsive to the RFP.

Management Proposal – *Who is to Do the Work and Under What Terms?*

The management proposal should contain information on the consultant's organization, proposed team structure and internal controls, and relevant experience, both in general work and in projects similar to the subject of the RFP.

Knowledge of past performance of a contractor can enable state agencies to predict the quality of and agency satisfaction with future work. Coordinating with other state agencies may be one way to obtain this information. References, monitoring reports, audit reports, or evaluations are potential resources to aid examination of prior performance.

Aspects of past performance that may be taken into account include:

- Quality of work/services, including compliance with contract requirements.
- Timeliness of performance, such as adherence and responsiveness to contract schedules.
- Cost controls, including staying within budget, and providing accurate and complete billings.
- Business practices and key personnel performance, including the performance record of the organization and its key staff.
- Effective working relations between the contractor and the agency.
- Customer satisfaction.
- Previous contract(s) terminated for default.

The proposal should also identify the contract manager and state the names of the staff to be assigned to the project, their functions and a detailed résumé for each.

The management proposal should emphasize staff commitment to the project. It may include the number of hours or percentage of time key personnel will devote to it. An organizational chart showing the responsibility of key project staff members may be requested. If references were requested in the RFP, they will be included here. Any subcontractor information is also included in this section. If the firm is a certified minority and/or women-owned business, proof of certification is included as well.

Cost Proposal – *How Much Will it Cost?*

The cost proposal should contain the following information as applicable:

- Maximum cost for the entire project broken down by activities, tasks, outcomes, phases or deliverables as appropriate to the project.
- Cost or pricing details. Rates often include all overhead and profit, unless requested otherwise.
- Estimated periodic billing to the agency based on the cost of the deliverable items.
- Any subcontract costs.
- Travel, lodging and other direct expenses, if allowable.

If requested, the proposer should supply a recent financial report or bank references for evaluation of financial responsibility.

5.4.6 Timeline for Responses

Many factors determine the amount of time between issuing the solicitation document and the due date for responses. Generally, consultants should be given enough time to prepare a thorough and comprehensive response. Four weeks from issuance of the solicitation is a reasonable time for consultants to prepare responses under most circumstances. The absolute minimum is two weeks, i.e., 10 working days, in the case of a simple project or a genuinely urgent situation.

If the timeline is too restrictive on a major procurement, the agency risks reducing both the quality and the quantity of proposals submitted. Consultants may not have the opportunity to assemble the best management team or to prepare a comprehensive technical proposal when unrealistic response dates are set. In some instances, qualified consultants may not bid if they think an unrealistic timeframe is being imposed or worse, they think the competition is not being conducted fairly.

If a pre-proposal conference is scheduled, it should be convened no later than two weeks after issuing the procurement document. This allows the agency time to prepare and distribute the information provided at the pre-proposal conference, which is then issued as an addendum to the Request for Proposals. The due date for responses would normally be two weeks after the pre-proposal conference.

5.4.7 Evaluation Criteria

Detailed evaluation criteria should be included in the RFP. The evaluation criteria must be consistent with the RFP. To use the point score method, evaluation criteria are individually weighted with a point value relative to the item's importance to project success.

The following types of evaluation criteria, not listed in order of significance, are often used to evaluate proposals. Each would be incorporated as a scored RFP element:

- Proposer's understanding of the project.
- Proposer's project approach and methodology.
- Quality of project work plan (technical proposal).
- Feasibility of the proposed schedule.
- Description of proposed deliverables.
- Project management and internal controls.
- Firm's and staff ability, capacity, and qualifications.
- Firm's relevant experience.
- Business references.
- Project cost.

Avoid vague or subjective evaluation criteria. The proposal evaluation scoring sheet, including specific criteria and the weighting or point value of each, is to be developed prior to issuing the solicitation document. Attached, as Appendix D, is an example of an evaluation scoring sheet. More detailed questions specific to the project would often be included in an agency's scoring sheet depending upon the nature and complexity of the project. The critical point is that the scoring sheet reflects the requirements stated in the RFP.

5.5 Another Type of Formal Procurement Document

A Request for Qualifications and Quotations (RFQQ) is a more streamlined procurement document that may be used when the project scope and associated tasks are well defined. The objective of an RFQQ is to select the firm most qualified to perform the work defined in the RFQQ at a competitive price.

The process is similar to that used for a Request for Proposals, but is less comprehensive, since a technical proposal or work plan is not being requested from the proposers. The evaluation is limited to an analysis of the firm's qualifications, experience and ability to perform the specified services and their costs. The weighting of these factors is contingent upon agency need. The RFQQ is to be issued to six or more firms or individuals to ensure that open and fair competition is achieved per Section 5.4.4 of the Guide. Advertising is required when the project is estimated to be $20,000 or more (see Section 3.3 for more detail). The Request for Proposals sample included as Appendix C can be used as the framework for an RFQQ by deleting the requirement for a technical proposal.

5.6 Competitive Solicitation - Variation

Agencies have occasionally indicated an interest in issuing competitive solicitations for personal services that allow other agencies to purchase from their contracts. If an agency is interested in this arrangement, the Request for Proposals (RFP) or Request for Qualifications and Quotations (RFQQ) must clearly state this intent. Proposers must understand the potential quantity of services that may be demanded in order to respond with a viable proposal.

The awarding agency is responsible to comply with all the terms of the RFP or RFQQ and the contract. The agency awards the contract specifying the scope of work, maximum contract amount and rates for services, period of performance, etc., and files the contract with OFM. Task orders may be negotiated and issued as approved among the awarding agency, the contractor and the agency for which services will be provided. Any amendments to the contract are filed by the awarding agency. As with all other contracts, the scope of services must be consistent with the description in the solicitation. Scope creep is not permissible.

In some instances, agencies have needed personal services on a short turnaround basis and have competitively awarded multiple contracts for a specific service, e.g., land appraisals. The contracts are awarded with a scope of work, period of performance, fees and maximum dollar value. However, work is not authorized until a task order is executed specifying the detailed scope of work, duration and cost for the task order. Based on the dollar amount, the contracts are filed with OFM, but the individual task orders are not. If the contract is formally amended to add dollars, scope or time, the amendment is filed with OFM. It is vital that agencies maintain the validity of the process by establishing a fair and impartial process up front by which task orders will be assigned to the qualified firms. Selection of a capable contract manager will be essential in ensuring successful management of a task order contract.

5.7 Unsolicited Proposals

An agency may occasionally receive a proposal that has not been asked for or solicited. The consultant in that instance is initiating the procurement process and is endeavoring to provide a service that he/she perceives the agency needs.

Agency staff should review the offer and make a determination whether it is feasible or potentially beneficial. If the service is deemed unnecessary or inappropriate by the agency, the proposal may be rejected. Written notice should be provided to the proposer of the agency's decision. If the service is deemed beneficial or necessary, a competitive procurement must be conducted. A case may be made for sole source procurement only if the service is determined to be unique or highly specialized.

CHAPTER 6

Consultant Selection

6.1 Narrowing the Field, Then Making Your Choice

Once proposals are received, they must be reviewed, analyzed and scored by the agency to determine the apparent successful contractor. The proposal represents the consultant's best offer to the agency.

Proposals submitted in response to an RFP must demonstrate that the proposer understands the agency's problem by recommending a workable, feasible solution. The proposal should state how the consultant plans to solve the problem and fulfill the needs; should define specific, definite, measurable and obtainable objectives; establish a time frame for the project; suggest how and when progress reports and evaluations will be made; and calculate costs of the consulting services. The proposal should stress economy and cost-effectiveness consistent with the difficulty of the project. It should describe the special talents of the consultant's personnel, their various backgrounds and skills, and the strength of the overall organization. It is then up to the agency to conduct a thorough and objective evaluation.

In much of what consultants do, effective communication is vital. The proposal should reflect an ability to organize and present data, to address complex situations, ideas and information, and to conceptualize and express appropriate and innovative ideas in a clear and effective style.

6.2 Proposal Evaluation Document

The proposal evaluation document assists the agency in fairly evaluating the consultants' proposals. It is prepared concurrently with the RFP and the major evaluation criteria are included in the RFP. **No criteria may be used in proposal evaluation that are not set forth in the RFP.**

Preparing the evaluation document prior to issuing the RFP results in a well thought out methodology for scoring and evaluating proposal elements, which is consistent with the

contents of the RFP. The criteria and the weight assigned to each element in the proposal, e.g., technical, managerial and cost, will vary depending upon the circumstances of each project. In a highly complex proposal, technical factors may be weighted highest. In that instance, the best technically qualified competitor may be selected even though the proposed costs are higher. On a project where numerous qualified consultants are expected to bid, cost may be given the greatest weight.

The following types of criteria, not listed in order of significance, should be addressed in the proposal evaluation document contingent upon the type of service required and the content of the RFP:

- Proposer's understanding of the project requirements.
- Project approach and methodology.
- Quality of the work plan (technical proposal).
- Feasibility of the schedule and ability to adhere to it.
- Description of proposed deliverables.
- Company ability, capacity and skill to provide the service.
- Company experience on projects of similar complexity and type.
- Project team structure and internal controls.
- Staff qualifications and experience.
- Satisfactory record of past performance.
- Cost.
- Company financial capability.
- Business references.
- Compliance with statutes and rules relating to contracts.

Fair competition necessitates that all competitors understand the basis upon which an award is made. Therefore, proposals must be evaluated based on the requirements set forth in the RFP and no other criteria may be used. A sample proposal evaluation scoring sheet is included as Appendix D. More detailed questions specific to the project would often be included in an agency's scoring sheet depending upon the nature and complexity of the project. The critical point is that the scoring sheet reflects the requirements stated in the RFP.

6.3 Selecting the Evaluation Team

The goal of the RFP process is to select the most qualified, responsive consulting firm among the field of competitors, through a fair and unbiased evaluation. Use of a panel of qualified individuals to evaluate proposals is common practice to accomplish this end.

Members of the evaluation team may be agency staff, employees from other state agencies or governmental entities, or individuals from the private sector. A variety of disciplinary skills and talents should be represented to ensure an impartial and objective analysis. Selection should be based on technical competence, familiarity with the procurement and applicable skills, understanding or expertise. In instances where the proposals are particularly complex, separate evaluation panels or teams may be used to evaluate each component.

It is advisable to have team members sign declaratory statements certifying their lack of potential conflict of interest and assurance of confidentiality. Evaluators cannot have a financial interest in the outcome of the selection. A sample Conflict of Interest and Confidentiality Statement form appears on page 6-4.

CONFLICT OF INTEREST AND CONFIDENTIALITY STATEMENT

RFP NO. _____

(PROJECT TITLE)

CONFLICT OF INTEREST STATEMENT

To ensure a fair procurement process and to guard against protest by unsuccessful proposers, I have carefully evaluated my position with regard to possible conflict of interest. I certify that I am not aware of any issue that would reduce my ability to participate on the evaluation team in an unbiased and objective matter, or which would place me in a position of real or apparent conflict of interest between my responsibilities as a member of the evaluation team and other interests. In making this certification, I have considered all financial interests and employment arrangements (past, present or under consideration).

CONFIDENTIALITY STATEMENT

In anticipation of my participation in the evaluation process used to evaluate proposals, I certify that I will not disclose any information about the evaluation of this RFP, during the proceedings of the evaluation process or at any subsequent time, to anyone who is not also authorized access to the information by law or regulation.

Name _____

Date _____

6.4 Communicating with Consultants

Agencies must provide open communication with prospective proposers. The RFP, therefore, should designate an RFP Coordinator, through whom all questions on the RFP will be directed. This communication is essential if potential contractors are to understand agency requirements and prepare responsive proposals.

Providing consistent information to proposers is extremely important. Inconsistency can result in one proposer receiving an unfair advantage over other proposers and potentially invalidate the entire competitive process. Any pertinent information generated after the RFP is issued should be incorporated into an addendum to the RFP and forwarded to all on the mailing list.

Agency employees should be instructed to refer all consultant questions about proposals to the RFP Coordinator, as named in the RFP. Some agencies state in their RFPs that contacting any other agency individual for information may subject the consultant to a determination of non-responsiveness. Opportunities for communication and information must be equally available to all potential respondents. Agencies may provide this opportunity through a formal pre-proposal conference, e-mail, an on-site visit or other controlled communication forum.

6.5 Pre-Proposal Conference

The pre-proposal or pre-bid conference offers a setting where all potential respondents may ask questions and seek clarification and additional information about the Request for Proposals in a public setting without gaining competitive advantage in preparation of their proposals. The pre-proposal conference also provides an opportunity for the agency to clarify complicated issues or requirements of the RFP. In addition, it provides a format to present administrative information to prospective proposers and to correct any errors discovered in the RFP.

Personnel familiar with the RFP and the project should preside at the conference and be available to answer questions. Many questions will be simple, and should be answered directly, but carefully. Some questions may not be immediately answerable, and the audience should be advised that a written response will be issued. No decision on complicated or sensitive matters

should be made at the pre-proposal conference.

Agencies should advise attendees that all answers are tentative and the agency will be bound only to the written questions and answers from the bidder's conference. The questions and answers from the bidder's conference must be sent to all who received the RFP. If the procurement was posted on the agency website, the questions and answers from the bidder's conference should also be posted on the agency website.

It may be helpful to tape-record the pre-proposal conference. The recording provides a ready reference and checklist for the staff in recalling all of the important points of the conference. A record of the information presented at the conference must be provided to all recipients of the RFP and distributed as an addendum to the RFP. This addendum could be distributed electronically to expedite delivery.

Attendance at the pre-proposal conference is generally not mandatory, but may be in some cases. The pre-proposal conference is generally used to brief prospective bidders on complex procurements. In situations where few questions could arise as a result of the RFP, the pre-proposal conference can be eliminated.

6.6 Receipt and Opening of Proposals

Proposals are required to be submitted by a definite time and date and to a specific location. Upon receipt by the agency, sealed proposals are to be stamped in by date and by time and initialed or signed by the individual receiving the proposal. This verifies receipt within the date and time frame specified in the RFP. Proposals received electronically will automatically indicate the date and time received.

Proposal security is necessary to ensure the integrity of the competitive process. One individual should be delegated the responsibility for receipt, recording and safekeeping of the proposals. Generally, this is the RFP Coordinator.

This person will date, time stamp and initial each hard copy proposal immediately upon receipt. Written proposals should be kept locked in a secure location.

Only the delegated individual(s) should know which firms have

responded. Prospective proposers should not be told which firms have submitted proposals prior to the deadline as it could potentially affect their own submission.

Opening is usually done promptly due to time constraints within the project schedule; it is recommended that this occur within two business days of receipt of proposals.

6.7 Late Proposals

Late proposals should not be accepted and the RFP should state this. If received after the date and time indicated in the RFP, a late proposal should be returned unopened with a letter or e-mail stating why the proposal is being returned.

However, state agencies may consider the following guidelines used by the federal government, which allows receipt of late proposals under the following circumstances:

- If the proposal was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of proposals, the proposal is accepted.
- If the proposal was sent by mail, and it can be determined that late receipt was due solely to government (in this case, state agency) mishandling after receipt, the proposal will be accepted.
- It is the only proposal received.

Proposals may be withdrawn at any time prior to award by written or electronic notice or by request in-person by the proposer.

6.8 Responsiveness of Proposals

The RFP Coordinator reviews the proposals for responsiveness as soon after the opening of proposals as possible, but prior to evaluation. For a proposal to be responsive, it must meet certain minimum requirements of the RFP. Only responsive proposals are submitted to the evaluation committee for consideration.

The terms "responsive" and "responsible" should be clearly understood for evaluation purposes. "Responsive" is normally used to describe the proposal while "responsible" is used to describe the proposer. A “responsive” proposal is one that complies in all material respects with the solicitation, including satisfaction of the minimum requirements clearly identified in the RFP, satisfaction that the proposer is technically and financially responsible, satisfaction that the service will be completed in accordance with the project schedule, etc. A “responsible” proposer is one whose skill, ability and capacity demonstrate the capability to provide the service.

The first review for responsiveness addresses form as well as substance. It includes a determination of whether the proposal conforms to the requirements of the procedural and technical specifications of the RFP. A non-responsive proposal is obviously one that does not conform to the essential requirements of the RFP. Such a proposal is then rejected as non-responsive and is not forwarded to the evaluation committee.

Occasionally all proposals may be deemed non-responsive and are, therefore, all rejected. This could be the result of unreasonable qualification requirements, misunderstanding by the consultants of RFP requirements, or insufficient or unclear communication of the objectives. The agency must then decide whether to revise and reissue the RFP or to consider other alternatives.

If only one proposal is received and it is responsive, award can be made. If it is non-responsive, it may be rejected. The reason(s) for rejection of proposals must be included in the contract file.

Evaluation of proposals will be based on the information contained in the RFP. Brochures or other promotional presentations, beyond what is sufficient to present a complete and effective proposal, may be redundant. The RFP Coordinator is free to remove this material before submission to the evaluation committee.

A sample checklist of responsiveness appears on page 6-9. The sample checklist should be customized to incorporate all the appropriate provisions of an RFP.

SAMPLE CHECKLIST FOR RESPONSIVENESS
(Request for Proposal)

- ☐ Proposal was submitted by or before (enter the time required by schedule)
- ☐ Received required number of copies of proposal.
- ☐ The Letter of Submittal and the Certifications and Assurances are signed by an individual authorized to bind the Proposer to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership or the sole proprietor.
- ☐ Proposal was formatted into four sections: Letter of Submittal, Technical Proposal, Management Proposal, and Cost Proposal.
- ☐ Proposer meets the minimum qualifications, which are: _____.
- ☐ Proposal demonstrates that the proposer is capable/responsible to provide the services.
- ☐ Technical Proposal is essentially responsive to the core work requirements of the RFP and does not impose conditions that would modify the RFP.
- ☐ Management Proposal is essentially responsive to core requirements of the RFP.
- ☐ Costs are not greater than $_____, the maximum amount disclosed as the project budget. **Note**: If the RFP did not state that proposed costs must not exceed a specific dollar amount, the proposal may still be responsive, but will receive fewer points when evaluated.
- ☐ Proposal conforms to the project schedule.
- ☐ Proposal provides at least 60 days for acceptance of its terms from the due date of proposals.
- ☐ Proposer submitted a timely Letter of Intent (if required).
- ☐ The proposal states that a “Certificate of Insurance” will be provided as a condition of award.
- ☐ Three business references were provided.

Note: Each item must be checked above for the proposal to be considered responsive.

6.9 Evaluating and Scoring the Proposals

The purpose of the evaluation process is to assess the proposals offered by the proposers based on the criteria in the RFP. This phase of the procurement process is perhaps the one that requires the most knowledge, judgment and skill. While evaluation is a substantial and sometimes complex process, the purpose is to secure the most favorable result for the state through conduct of an objective and thorough evaluation. The formal evaluation lends integrity to the competitive process and ensures consultants of fair and equal treatment. Also, an important correlation exists between the degree of precision in the evaluation process and the ultimate satisfaction with the results of the contract.

The use of an evaluation team to evaluate proposals is the preferred method of ensuring objectivity. It is important that the evaluation team collectively offer the overall knowledge and expertise to evaluate the proposals effectively and objectively. Evaluators should certify they will not disclose any information available to them as evaluation team members. Many agencies require evaluators to sign conflict of interest statements that certify their lack of conflict in the process. (See Conflict of Interest and Confidentiality Statement in Section 6.3.)

An evaluation committee generally consists of three or more members (preferably an odd number), depending on the complexity and scope of the service. For complex procurements, an agency may use separate evaluation teams or committees for the technical proposals, management proposals and/or the cost proposals, each committee containing specific expertise applicable to the evaluation.

In briefing the evaluation team, the following points should be emphasized:

- Adhere strictly to the evaluation criteria set forth in the RFP.
- Follow the evaluation and scoring methodology that has been developed.
- Provide strong, clear, substantive comments supporting determination of acceptable and unacceptable proposals.
- Use numerical weights for ranking purposes.
- Assess proposals against the RFP requirements and evaluation criteria, not in relation to each other.
- Maintain complete confidentiality throughout the evaluation process.

6.9.1 Study the Criteria

Evaluators should study the selection criteria in the RFP and the evaluation scoring form before beginning the actual evaluation. A proposal evaluation form for scoring should be provided to all evaluators with instructions for its use. This form will serve as a means of articulating the specific methodology to be used and will make it easier to combine the findings of the evaluators.

6.9.2 Explain the Ratings

As the evaluator reads, evaluates and rates each proposal in terms of the agreed upon ratings and numerical equivalents, the evaluator may want to prepare a written explanation for the ratings reached. Evaluators' scores may be totaled together for a final score, or evaluators may meet to develop a team score.

6.9.3 Independent Evaluation

By having each team member first independently evaluate all the proposals, the agency receives the benefit of having several opinions on the relative merits of the proposals. The true value of the team approach is a balanced conclusion reflecting the differing viewpoints and contributions of the team members.

6.9.4 Consensus

After the individual team members have separately evaluated the proposals, the team, under the leadership of a team chair, may meet and formulate its collective decision. The recommendation for an award is then provided to agency management for ratification. Where the team is unable to reach agreement, the evaluation report should include the majority conclusion and the dissenting view, each with supporting rationale.

6.10 Blind Evaluation

If an agency decides to conduct a blind evaluation of proposals, the agency assigns a bidder code to each bidder. The bidder uses this code in the appropriate sections of the proposal, rather than the organization's name. Terms such as "this organization" would be used in the coded sections of the proposal. Generally, the management section of the proposal would state the firm name, but would be scored separately from the other sections

during the evaluation. This is another way to ensure objectivity in the evaluation process.

6.11 Reference Checks

Checking consultant references can be a useful tool in assessing the capabilities of the firms and the individuals to be assigned to the project. The timing at which references are checked and the number of references required depend on the needs of each contract and the RFP instructions. References can be checked as part of the evaluation process and points awarded accordingly, or they can be checked only for the top finalist(s). The most important factor is that references are checked in accordance with the RFP requirements.

Examples of the types of questions that references may be asked are:

- What type of work has this firm done for you?
- How would you rate work performed by this firm on your project(s)? Why?
- Was the project completed on time? If not, why not?
- Was the project completed within the budget? If not, why not?
- What was the quality of deliverables submitted?
- Was staff responsive to solving problems that may have occurred on your project? Explain.
- What was the extent of staff turnover?
- What are the strengths and weaknesses of the firm?
- Would you be willing to contract with this firm again?
- Did assigned consultant staff work well with agency staff? If not, explain.
- Are there any other comments you wish to provide?

6.12 Oral Presentations

To make a final selection from a field of highly qualified, close-scoring finalists, it may be advantageous to invite the top-scoring finalists for oral presentations. Oral presentations may be structured to allow a specified time limit for the presentation and time for questions from the evaluation panel. Individuals who evaluated the written proposals should also be part of the panel evaluating the oral presentations. The evaluators then have an opportunity to listen to the consultants' oral presentations of their proposals and to ask questions. Each oral interview is to be conducted in the same format. The oral presentations provide final input into the selection of the apparent successful contractor. The evaluators then score the oral presentations and arrive at a consensus decision for award.

The score from the oral presentation may be the determinant score for the procurement, or it may be added to the score of the written proposal for determination, whichever is specified in the RFP. However, the RFP language must describe how these scores determine the final result.

6.13 Determining the Apparent Successful Contractor

Based on the evaluation team's recommendation for award, an apparent successful contractor is selected. Agencies may then have an internal approval process to complete prior to ratification of the award decision by management. Once the agency approval process is completed and the apparent successful contractor is selected, the consultant should be promptly notified by telephone, electronic mail or by letter. A meeting can then be scheduled to begin contract negotiations, if required, or a draft contract can be initiated.

Unsuccessful proposers should be notified promptly, preferably in writing. Letters should be sent electronically or by facsimile to hasten notification and to confirm receipt on a specific date.

6.14 Documenting the Selection

All agency actions taken to arrive at the award decision must be properly documented. This documentation should be comprehensive in order to substantiate that all bidders were treated equally and fairly and that an equitable and impartial competitive process was conducted, provide support of all decisions made, and present a complete picture of the award process to any interested party who reviews the file. Documentation, at a minimum, should include:

- Copy of the advertisement showing where it was published.
- Copy of the solicitation document.
- Names of firms that were directly sent the solicitation or notification regarding the solicitation.
- Names of firms that submitted proposals.
- Copies of all proposals submitted.
- Summary sheet of scoring for all proposals scored.
- Individual evaluator's score sheets for both the written proposals and oral interviews, if used.
- Copy of written notification to successful and unsuccessful bidders.

Other documentation forms that may be included are:

- Conflict of Interest and Confidentiality Statement signed by each evaluator.
- Pre-award Risk Assessment form.

This documentation must be retained in accordance with records retention schedules set by the Office of the Secretary of State and agency policy. Generally, records must be retained for six years.

6.15 Debriefing Conferences

Unsuccessful proposers are to be afforded the opportunity of debriefing conferences if they so request. The request for a debriefing conference is limited to the time period set forth in the RFP, such as that the request be made within three days of receipt of the written notification indicating that their proposal was not selected.

Discussions should be informal and limited to a critique of the requesting consultant's proposal. This feedback will assist the proposer in understanding the strengths and weaknesses of his/her proposal so that future efforts may be more effective. Agency representatives should be able to explain the scoring of a consultant's proposal in order to assure the unsuccessful proposer that the 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.

6.16 Public Disclosure

Proposals are considered public records as defined in RCW 42.17.250 through 42.17.340.

In the event a proposer desires to claim portions of its proposal exempt from public disclosure, the proposer must identify those portions in the proposal transmittal letter. Each page of the proposal claimed to be exempt must be clearly identified as "confidential". The agency has the authority to decide whether any or all of the claimed exemptions are appropriate.

The proposal of the successful consultant generally becomes part of the contract that is subject to public disclosure. Data contained in the proposal, all documentation provided and innovations developed as a result of the contract become the property of the agency.

However, there are exceptions to the foregoing public disclosure guidelines. An agency should consult its Assistant Attorney General for clarification.

6.17 Protest of the Procurement

It is essential that proposers have confidence in the procedures for soliciting and awarding contracts. This can be assured by allowing an aggrieved party to protest the procurement. A protest procedure incorporated into the Request for Proposals provides benefit and protection to both the agency and the consultant community. In the event a protest of the procurement is submitted, the agency knows the steps to follow as outlined in the procedure to respond to the protest. Conversely, the

consultant is made aware of the process by which a protest may be submitted and the time frame under which a protest will be accepted.

For a protest to be considered, it must show an issue of fact concerning:

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

The agency will review the protest to determine if any of these three factors affected the solicitation.

Protests not based on procedural matters will not be considered. An agency should reject a protest as being without merit if the protest addresses issues such as an evaluator's professional judgment on the quality of a proposal or the agency's assessment of its own and/or other agencies needs or requirements.

Agencies may require a specified format for the protest. If an agency does not specify, the protest may be in any written format, but should be clearly designated as a protest document.

Some agencies require that protests may only be filed by firms which have first participated in a debriefing conference and require that protests be submitted within three to five business days of the debriefing conference. The agency should send the protester a written decision within a reasonable amount of time, for example, three to five business days. If the agency does include timelines in the protest procedure, they must strictly adhere to the timelines.

CHAPTER 7

Formalizing the Contract

Upon determination of the apparent successful contractor, the next step is to prepare a written contract identifying all terms of agreement between the contracting parties.

7.1 Contract Negotiations

Prior to awarding a personal service contract, the agency determines if it is advisable to conduct negotiations. Negotiations may be held with the apparent successful contractor if more favorable contract terms are desired 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, certain items of scope, billing items, etc. Negotiations should eliminate any ambiguities in the contractor's proposal and clarify contract terms. If the terms offered in the initial proposal are considered fair and equitable, an award may be made without negotiation.

The agency's primary consideration during contract negotiations is to reach a mutually advantageous position on issues of concern while fulfilling administrative and technical requirements. The recommended approach in negotiations is not to acquire an unfair advantage or to make unreasonable demands of the consultant, but to secure the most favorable terms and conditions for the agency.

Negotiated solutions are effective when each party has a stake in maintaining the conclusion. Throughout the process the negotiator must establish and continue sound, cooperative and respectful relationships with the other party. Inquisitive, exploratory, purposeful, yet diplomatic, probing can produce the knowledge required to make informed business decisions in negotiations.

7.2 Draft Contract

Personal service contracts must always be set forth in writing. The required elements for a personal service contract are: identification of the parties; scope of service; maximum compensation and payment mechanism; period of performance; and signatures of responsible parties. Numerous other terms are included in contract documents to provide additional legal protection to the State. Agencies may utilize a contract format appropriate to the services being acquired. For example, an agency may use a “short form” contract when the contract is less than $5,000 and/or for a simple scope of services.

The formal written contract is to accurately document all terms and conditions and record the intent and agreement of the parties. The contract is the culmination of the entire procurement process and formalizes the agreement between the parties. Agency personal service contracts generally have two primary sections: 1) General Terms and Conditions and, 2) Special Terms and Conditions.

The agency’s contract format is to be reviewed "as to form" by the Attorney General's Office (AGO) prior to execution. As long as the AGO-approved contract format is used, it is not necessary that each contract executed by the agency be approved "as to form" by the Attorney General's Office.

Agencies will not structure contracts to avoid the competitive procurement or other requirements of this policy.

7.3 General Terms and Conditions

The General Terms and Conditions are contract terms established by law. These terms have been determined by the Attorney General's Office to apply to most agency personal service contracts. The General Terms and Conditions are not to be changed without specific advance approval by the Attorney General's Office. They are generally attached as the first exhibit to the contract.

7.4 Special Terms and Conditions

The Special Terms and Conditions are the terms governing a specific contract and include the elements indicated below. Many other terms may be routinely included in an agency's Special Terms and Conditions. For the purposes of this manual, only the most common elements are included.

7.4.1 Identification of the Parties

This section identifies the parties entering into the contract. It states the name of the agency, the contractor's legal corporate name and address, and may include other identifying information such as telephone number, fax number, e-mail address, state Unified Business Identifier number (issued by the Department of Revenue), and either the Taxpayer (Federal) Identification Number or Social Security Number of the contractor.

7.4.2 Scope of Work

The scope of work is the single most important element in the contract. This section documents all elements of the work and magnitude of the project and reflects the mutual understanding of the parties. The scope of work is to be consistent with the project and services described in the solicitation document issued. It is important to remember ambiguous provisions are generally interpreted against the drafting party.

Hold the contractor accountable: The contract should hold the contractor accountable for results. Results or performance should be the focus, not procedure or process. Work requirements should be written in an auditable, results-oriented manner and clearly define all performance objectives, work expectations and project milestones. Results may include reports, training sessions, assessments, evaluations or other tangible services.

Be precise: The more precision in the scope of work, the more likely the contractor will satisfy the agency's need. Performance requirements should be written in such a way that it can easily be determined if and when the contractor has successfully completed performance. An auditable, results-oriented scope of work should also include consequences for noncompliance, such as non-payment or termination of the

contract.

Use active voice: The clearest way to indicate who is responsible for the work is to use the active voice. Precede requirements with "The Contractor will or must" or "The Agency will or must." Use of the passive voice obscures who is responsible.

Due dates: Due dates for formal written reports or other deliverables are to be stated in the contract as well as any timelines for required oral progress reports. Also include contract monitoring requirements. For example, regular meetings should be scheduled to review standards, evaluate progress, identify problem areas, and to determine actions to be taken by parties to resolve problems. Contractor's staff assignments should also be included in the scope, as applicable. This ensures that personnel shown in the proposal are assigned to the contract with the time commitments reflected in the proposal. It also allows the agency to effectively lock in time commitments of key consultant personnel.

An option is to incorporate the contractor's proposal. The scope of work section of the contract may also simply incorporate the contractors' proposal by reference, if all work objectives are satisfactorily defined. When incorporating the contractor's proposal it is important that it remains accurate and that no changes have been negotiated after the proposal was submitted.

7.4.3 Period of Performance

The contract is to specify a start date and a completion date. While there may be exceptions, in most circumstances, an end date will be required.

Personal service contracts, subject to filing with OFM, should include appropriate language to reference the effective start date. For certain competitive contract filings, work may begin the date the contract is filed with OFM. For others, the contract effective date will be ten (10) working days after the date filed with OFM, subject to the review and/or approval of OFM. For contracts and amendments subject to the 10 working day filing period, the following language is helpful to include in the documents:

> *Under the provisions of Chapter 39.29 RCW, this personal service 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 thereunder shall be commenced nor payment made therefore 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.*

Personal service contracts may cross biennial and fiscal year lines, and, when they do, the contract should specify that any service performed beyond the end of the fiscal year or biennium is authorized contingent upon receipt of funding. No services are to be provided until funding is authorized.

7.4.4 Compensation and Payment

This section must include all elements relating to cost and payment, such as maximum contract cost, cost per deliverable, rates for individuals providing services, number of hours required, allowable expenses and total authorized for expenses, payment, and invoicing procedures. Clearly defining cost elements authorized for reimbursement will avoid confusion or minimize disputes later in the contract.

With few exceptions, agencies may not pay for any service prior to receipt thereof, per the Washington State Constitution, Article VIII, Section 5, "Credit Not to be Loaned."

This section should also include whether the agency will pay expenses incurred by the contractor and, if so, which ones. Such expenses may include airfare (economy or coach class), lodging and subsistence necessary during periods of required travel; expenses incurred during travel for telephone, copying and postage, and private vehicle mileage. If other types of expenses are to be allowed, they must be clearly defined. Travel expenses for contractors are generally reimbursed at the current state travel reimbursement rates, which are posted on the following website: http://www.ofm.wa.gov/policy/10.10.htm.

The contract should state the maximum dollar amount allowed to be paid under the contract for expenses. To determine the contract threshold for OFM filing, the total dollar amount of the contract, including the amount to be paid for services plus the estimated amount to be paid under the contract for expenses, is used.

It is also helpful to include invoicing instructions in the contract.

The agency may require use of State Form A-19, Invoice Voucher, for submittal of requests for payment. The contract should state how often invoices should be submitted and require that the invoice include sufficient detail and supporting documentation to determine the appropriateness of the charges. Many contracts require that any single expense in the amount of $50 or more should be accompanied by a receipt in order to receive reimbursement.

7.4.5 Fiscal Reporting

Fiscal reporting provisions require a contractor to report on or allow access to 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 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 fiscal reporting provisions are:

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

7.4.6 Payment Documentation

The contract should define the information and documentation required to justify payment.

At a minimum, payment documentation 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 Section 85.32.30 of the State Administrative and Accounting Manual, published by the Office of Financial Management, at http://www.ofm.wa.gov/policy/85.32.htm.

Financial record retention and access should follow state agency requirements and should be identified in the contract. The

Office of the Secretary of State publishes the General Records Retention Schedule for Agencies of Washington State Government at http://www.secstate.wa.gov/gs/default.htm.

7.4.7 Signatures of Responsible Parties

Only those persons with authority to bind the parties may sign the contract document. The agency representative who signs a contract should have delegated signature authority. The contract is considered executed when all authorized parties have affixed their signature.

It is good business practice to have the contractor sign the document first. This ensures that the contractor has reached full agreement and the agency can respond with its approval signature.

The signature block should not appear on a page by itself. A portion of the text of the contract should be included at the top of the page.

State agencies, colleges, universities and institutions use a variety of contract formats for their personal service contracting. Each agency is required to have its contract format approved "as to form" by the Attorney General's Office. An example of an approved personal service contract appears as Appendix E.

7.5 Explanation of Other Contract Terms and Conditions

A brief explanation of terms and conditions typically used by state agencies as part of either their Special or General Terms and Conditions follows. This listing is not all-inclusive of the contract terms used by all state agencies. However, it does capture those elements that most frequently apply to agency personal service contracts.

Advance Payments Prohibited – All payments must be made after the delivery of service. Agencies cannot issue payment for services prior to the performance of work.

Changes and Modifications – This sets out the terms for equitable adjustment if changes are made to the contract that impact cost, period of performance or services to be provided.

Confidentiality – Contractor is required to maintain all

information about the agency and information accessed under the contract as confidential. Contractor cannot use, disclose, share, transfer or sell to third parties any information accessed under the contract that may be classified as confidential.

Conflict of Interest – The agency may, by written notice, terminate the right of the contractor to proceed if the agency finds that any gratuity, bribe, extra payment in the form of entertainment, gifts or otherwise has been offered or given by the contractor with the intent of securing the contract or receiving favorable treatment with regard to any aspect of the contract.

Contract Representatives – The contract should identify by name or by position the persons responsible for representing the agency and the contractor as contract managers in matters related to the execution of the contract. These individuals will be accountable for project performance and results.

Covenant Against Contingent Fees – The contractor warrants that no person or selling agent has been employed or retained to solicit, secure or influence award of the contract. The purpose of this prohibition is to prevent the attempted or actual exercise of improper influence of a third party in the procurement process.

Disputes – When a dispute arises between the agency and contractor, remedy may be provided through a disputes hearing or a disputes panel. The dispute process will generally precede any court action.

Funding Withdrawn – In the event funding is withdrawn, reduced or limited after the effective date of the contract, but prior to completion, the agency may terminate the contract under the "Termination for Convenience" clause without the required notice.

Governing Law – The contract will be governed by the laws of the state of Washington. Since commercial law varies from state to state, it is important to include the governing law, particularly when dealing with out-of-state contractors.

Indemnification – This clause protects the state from negligence or omission on the part of the other party, pursuant to RCW 4.92.270. The contractor holds the state, agency and agency employees harmless from claims, suits or actions arising

from the negligence or omission of the contractor while performing the terms of the contract. Standard indemnification language is provided in the *Contracts: Transferring and Financing Risk* manual published by the Office of Financial Management, Risk Management Division.

Independent Capacity – The contract should state that the contractor is independent and neither the contractor nor contractor's employees are to be considered employees of the state. The state legitimately does not have to pay employee taxes such as workers' compensation, FICA and unemployment compensation for contractors.

Industrial Insurance Coverage – The Department of Labor and Industries administers the industrial insurance program, which provides medical coverage for workers who sustain on-the-job injuries. The contractor is required to comply with the requirements of Title 51 RCW regarding industrial insurance coverage prior to performing any contract work.

Licensing and Accreditation – Contractor agrees to comply with applicable federal, state, county or municipal standards for licensing and accreditation to assure quality of service.

Limitation of Authority – Only the individual with written delegation of signature authority may alter or modify any clause or condition of the contract.

Nonassignability – This ensures the contractor cannot sell the contract to a third party.

Noncompliance with Nondiscrimination Laws – Noncompliance or refusal to comply with the nondiscrimination laws, regulations or policies may result in rescission, cancellation or termination of the contract.

Nondiscrimination Clause – This clause is used to ensure the contractor is in compliance with all relevant statutes and requirements relating to equal opportunity employment.

Order of Precedence – In the event of inconsistency between contract documents, the order of precedence of the documents should be stated. First, federal and state law prevails, then the special terms and conditions, the general terms and conditions, the contractor's proposal, the Request for Proposals, etc.

Privacy – Personal information collected, used or acquired under the contract is to be used only for the purposes of the contract.

Records Maintenance – Contractor will maintain books, records and documents, which reflect all direct and indirect costs expended in the performance of the contract for potential audit of billing statements, for a six-year period.

Registration with the Department of Revenue – If a contractor does not have a Uniform Business Identifier (UBI) number, the agency should notify the contractor to register with the Washington State Department of Revenue. (In some instances this is not required, and the Department of Revenue can so notify them as applicable.) When applicable, contractor will be issued a State UBI number to be used in payment of state business and occupation taxes under the contract. Out-of-state contractors performing work in Washington State are also required to have UBI numbers.

Right of Inspection – The contractor will provide right of access to its facilities to the agency or other authorized agent or official in order to monitor and evaluate performance, compliance and/or quality assurance under the contract.

Rights in Data – Data originating from the contract will be "works for hire" as defined by the U.S. Copyright Act of 1976 and will be owned by the agency.

Severability – If any provision of the contract is determined to be invalid, the other contract provisions are not automatically invalid.

Subcontracting – This section is used to define conditions under which the contractor can subcontract work. Generally, the consultant's proposal will identify the subcontractors. When the service of a subcontractor is required after award, and was not identified in the original contract, the prime contractor must request advance approval from the agency before authorizing work by the selected subcontractor on the project.

Treatment of Assets – Title to all property furnished by the agency and/or purchased by the contractor, as a reimbursable item under the contract will remain with the agency. The contractor will be responsible for loss to any such property and will return the property upon completion of the contract.

Termination for Convenience – This term allows the contract to be terminated upon advance notice when it is in the best interest of the agency.

Termination for Default – The contracting agency will reserve the right to judge the competency of the contractor at any stage of the contract. This term allows termination of the contract due to documented deficiencies in the contractor's performance.

Termination Procedure – Provides information regarding suspension of services pending approval of a contractor's corrective plan by the agency. If the corrective action plan is not accepted by the agency and the agency elects to terminate the contract, the contractor is required to deliver to the agency any property produced to the point of termination as part of the contract performance. The steps the contractor must follow once a notice of termination is received are delineated.

Third-Party Beneficiary – Any subcontracts entered into by the contractor will name the state as the third-party beneficiary.

Venue – The venue is the locality in which a trial would occur. Any lawsuit involving the contract would be filed in the county stated in this clause. For agencies in the Olympia area, for example, this is Thurston County.

Waiver of Default – This clause states that waiver of default is not to be considered waiver of any subsequent default.

7.6 Approval as to Form

"Approval as to form" by the Office of the Attorney General (AGO) verifies legality of the contract instrument, but does not imply concurrence in or approval of the content. As long as the AGO-approved format is used, it is not necessary that each contract executed by the agency be approved "as to form" by the AGO. Submittal to the Assistant Attorney General is recommended when varying from the approved contract format.

In addition to approval for form, it is often advisable to have contracts reviewed by the Assistant Attorney General for "substance and content." Some agencies submit all contracts to the Attorney General's Office for review of content; others submit only those on which there is a question as to substance or content.

7.7 Performance Bonds

When engaged in large projects or when dealing with unknown companies, it may be prudent to request that a company obtain a performance bond. A performance bond guarantees that the work will be completed in accordance with the scope of work at the original contract price. The need for a performance bond should be carefully evaluated because the cost is indirectly borne by the state. It can also discriminate against the small or new companies that cannot obtain such a bond or can only get one at a high price. Contractors who have previously defaulted or failed to complete projects may also have to pay a higher price for performance bonds.

Performance bonds are routinely required on large construction contracts to reimburse the state for any loss that may occur due to a partial or total contractor default.

7.8 Liability Insurance

The Office of Financial Management, Risk Management Division (RMD), recommends that agencies include liability insurance requirements in their contracts. 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 through RMD and on the OFM web site at: http://www.ofm.wa.gov/rmd/risk.htm.

Contract managers should analyze the type of services to be provided and evaluate the state's exposure to legal liability that may result from contracting. State agencies can be financially protected from those who seek legal recourse by requiring personal service contractors to carry insurance. If you have questions on liability insurance, contact the Risk Management Division at (360) 902-7301. Prior to contacting RMD, contract managers should contact internal agency staff who may be knowledgeable about insurance requirements.

Appendix C, Request for Proposals, Section 2.17, includes sample language that may be used to require insurance coverage on a proposed personal service contract.

7.9 Industrial Insurance Coverage

When a state agency enters into a personal service contract, the contractor's employees should be covered by industrial insurance. 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 holds the contracting agency responsible for making sure the contractor has coverage. Employments excluded from mandatory coverage are listed in RCW 51.12.020 and include sole proprietors, partners, corporate officers and others. The employer may elect optional coverage for these employments.

To promote compliance with Title 51 RCW and avoid unplanned financial liability for the payment of industrial insurance premiums, agencies should review RCW 51.08.070, 51.08.180 and 51.08.195 and determine whether a potential contractor meets either the definition of "employer" or that of a "worker." Making this determination may require a complex analysis. To assist in determining whether the designation of "employer" or "worker" is applicable, please call the Field Audit Compliance of the Department of Labor and Industries at (360) 902-4769, (360) 902-4753 or you may contact by email at verifystatecontracts@lni.wa.gov. For security, please include (1) your full name, (2) your agency name, (3) the purpose of your request, and (4) an explanation of the attachment, if any.

For personal service contracts where the contractor meets the definition of "employer" under RCW 51.08.070, the following language should be incorporated in the contract's general terms and conditions:

Industrial Insurance Coverage – The Contractor will comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, Agency may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The Agency may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by Agency under this Contract, and transmit the deducted amount to the Department of Labor and Industries (L&I), Division of Insurance Services. This provision does not

waive any of L&I's rights to collect from the Contractor.

In those instances where the contractor meets the definition of "worker" under RCW 51.08.180 and 51.08.195, the Department of Labor and Industries suggests the following alternative language:

The agency acknowledges that the essence of the work specified in this contract constitutes personal labor, thus making the contractor a covered "worker" as defined in Title 51 RCW. The agency therefore agrees to provide industrial insurance coverage for the contractor during the course of employment under this contract, as may be required under Title 51 RCW.

Contractors must be licensed with the Department of Labor and Industries to perform work in the construction trades. The types of work that require such licensing are described in RCW 18.27.010 and 19.28.120. Agencies can verify a contractor's compliance with Titles 18 and 19 RCW by contacting the Contractor Registration Unit at (360) 902-5202. In the event the contractor is found to be noncompliant, the agency may still enter into the contract, but should notify the contractor that no payments for service provided under the contract will be made until the contractor furnishes evidence of full compliance. For long-term contracts, the agency should require the contractor to provide proof of continuous compliance with Titles 18 and 19 RCW prior to release of final payment under the contract.

7.10 Fiscal Considerations

Agency staff should consult with agency fiscal and auditing staff if there are questions regarding fiscal considerations of contracts. The following are general fiscal principles to be aware of:

General Fiscal Principles

- State agencies should pay no more than a reasonable and fair price for services.
- Payment to the contractor should be made according to the terms of the contract. A clear statement of work should be developed and should directly relate to the method of compensation in the contract.
- The contract should identify the source and amount of funds. If the source of funds is federal, federal rules and

regulations must be followed and may supersede state rules and regulations. Consult applicable federal regulations as necessary.

- Contracts should specify that payment will **not** be made for the same or similar services more than once (no duplicate payments). Contracts should contain language to recover disallowed costs due to duplicate billing.
- Contractors should have accounting methods and systems that are describable and auditable, as applicable to the circumstances. Contractors should comply with accounting measures and principles appropriate to the contractor's type of entity and as identified in the contract.
- State agencies should use the accounting methods and systems published in the State Administrative and Accounting Manual (SAAM). You may locate the manual online: www.ofm.wa.gov/policy/saamintro.htm.
- Payments made under personal service contracts should be necessary and reasonable for the type of services being provided. The costs should be directly attributable to the specific work or the normal administration of the contract.
- Payments made under personal service contracts should be adequately documented and supported by appropriate accounting records maintained by both the state agency and the contractor.
- Financial reporting procedures and requirements should be clearly identified in the contract to ensure that contractors are able to record expenses by funding source.
- State agencies should pay contractors for services in a timely manner (RCW 39.76.010).

7.11 Contract Payment Terms

Prior to the contract award, the services should be analyzed to determine the most effective compensation method (i.e., cost reimbursement, time and materials, fixed price, or performance based). Ideally, the method selected will be one that best ensures delivery of services, encourages efficiencies and effectiveness of service, and provides the best value to state agencies. In some cases, the method of compensation may

include a mix of payment methods. For example, the method of compensation may be based primarily on attainment of specific performance targets, but could also include a periodic fixed or lump sum payment after completion of specific work to ensure the contractor has funding sufficient to meet core-operating requirements.

If subject to negotiation, proposed contractor budgets or rates of reimbursement should be reviewed to ensure that the level of compensation is reasonable and necessary to accomplish agency objectives. Agencies should consider whether there is a reasonable correlation between the quality of service provided and the costs of providing the service as identified by the contractor.

The method of compensation selected may have an impact on the level and type of monitoring activities required to ensure that the state receives the services contracted for, and where specified, the funds are used as intended. Contracts with a cost reimbursement compensation method or contracts that use multiple funding sources are likely to require a higher level of monitoring than contracts using other payment methods as they may pose a higher risk, because the costs that are reimbursed may not be eligible or necessary.

Personal service contracts should state the method of compensation that will be used to reimburse the contractor for delivery of services.

Typical methods of compensation include:

Cost reimbursement: This type of contract or method of compensation has a higher risk for the state agency because it reimburses the contractor for all costs incurred under terms of the contract. To prevent overpayment, allowable cost provisions should be clearly identified in the contract. Contract managers may want to consider including in the contract a provision for a maximum allowable compensation level for the contract period and a budget. These provisions can help to ensure the contractor is not overpaid and that only appropriate costs are reimbursed.

When the contractor will be paid on a cost reimbursement basis and will be using funding sources in addition to those provided under the state agency's contract, contract managers might want to consider requesting from the contractor a description of its methodology for assigning costs to each funding source.

Subsequent financial reports should be sufficient to track revenue and expenses by funding source. When multiple funding sources are used, it may be necessary to work with the contractor to ensure the contractor complies with the contract terms and that the appropriate documentation is maintained so that allowable costs are billed only once to the state agency. Guidance should be provided to the contractor, prior to the contract start date, for any special compliance, documentation, or other requirements that are related to the use of multiple funding sources.

Cost reimbursement contracts generally require more fiscal pre-planning and monitoring than contracts employing other methods of compensation.

Time and materials contract: Under time and materials contracts, the state pays a fixed hourly rate and for the costs of certain specified materials. The nature of these contracts may discourage efficiencies on the part of the contractor. Time and materials contracts should have a ceiling amount that the contractor may only exceed at his/her own risk. This type of reimbursement may be used if the agency is unable to clearly define the level of effort required to accomplish the objectives. A time and materials contract places most of the risk on the agency and little on the contractor. Frequent contract monitoring is required to ensure that the number of hours is kept to a reasonable level.

Fixed price or lump sum: The contractor receives a set fixed amount or lump sum payment based on terms established in the contract. Typically, payment is tied to completion of agreed upon performance achievements. Other alternatives are possible, such as progress payments made to compensate for activities conducted over the specific period of the contract. This type of contract should generally establish a maximum allowable level of compensation. With this method of compensation, the agency does not pay if specific terms in the contract are not met and thus the risk is placed on the contractor. This allows for a more summarized form of reporting from contractor to agency.

Performance based: These contracts are based on attainment of specific outcomes. The rate of compensation is generally negotiated based on cost information provided by the contractor. In some cases, the rate may be set by agency policy or other

means. Generally, performance based contracts identify the maximum allowable compensation. This allows the agency to define the quality of services in terms of performance standards and pay accordingly. Performance based contracts differ from time and materials or fixed price contracts in that if the quantifiable quality of service is low, the payment may be reduced or withheld. This requires a higher level of reporting from the contractor to the agency. The contractor primarily assumes the risk because the agency does not pay if performance levels are not met. Generally, no miscellaneous expenses are authorized under the contract. For federally funded contracts, be aware that there may be some requirements to reimburse actual costs.

The method used to determine payment to the contractor should ensure that the state receives full value for the money, and the “general fiscal principles” listed in this guide are considered. Cost settlement procedures should be established by state agencies to ensure they have a process for recovering costs that have been identified in an audit of the contractor as not allowed under the contract. Contract managers should consult with their accounting or auditing staff and with the Office of the Attorney General for further guidance.

7.12 Security for Performance

In instances where the scope of contract service is difficult to specify or define, agencies may elect to write a "security for performance" term into the contract. This allows the agency to withhold a certain percentage or specified amount from each of the contractor's invoices (often 10 percent). Upon completion of all performance obligations of the contract to the satisfaction of the agency, the withheld funds are released to the contractor.

On large construction projects, these retained funds represent considerable dollars that are held in joint escrow accounts. Upon completion and acceptance of the construction project, funds are released to the contractor.

7.13 Contract Execution

The contract is executed when all authorized parties sign it. Upon execution, signed copies of the contract should be provided to all interested parties including, but not limited to,

the contractor, the contract manager, agency contract office, and agency accounting office. In most instances, service may begin immediately or may be scheduled for a predetermined date.

For those contracts subject to the 10 working day filing period, contract work may not begin prior to 10 working days from the date it is submitted to OFM, subject to OFM review and/or approval. A civil penalty may be imposed if work begins prior to the start date. See Chapter 4 for more information on filing requirements and applicable filing periods.

CHAPTER 8

Managing/Monitoring the Contract

Contract management means 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. For the purposes of this chapter, however, the particular areas of contract management that occur after contract award will be discussed. The contract manager is generally the individual named in the contract as responsible for its oversight. This can be a program manager, an executive manager, a contract specialist, or any other individual designated by the agency.

8.1 Responsibilities of the Contract Manager

The responsibility for contract management may be assigned to a specific individual or carried out by a team that has the necessary program and fiscal expertise and authority to assess service quality and ensure compliance with contract provisions. Performance expectations of contract managers should be clearly defined. Responsibilities of the contract manager include:

- Understanding the contract, including the specific contract obligations and performance indicators by which performance will be monitored.
- Assessing the risks related to the project before contracting for services to determine the extent of monitoring appropriate to the contract.
- Ensuring the contractor has a clear understanding of how the contract will be managed and monitored.
- Providing the contractor with guidance and technical assistance, as needed, to promote effective contract performance.
- Identifying the extent and source of other public funding, if any, the contractor is using to fund services provided by the contract.
- Monitoring the contractor's activities to ensure quality service delivery.
- Ensuring funding is used only for authorized purposes.
- Collaborating with other state agencies using the same contractor to ensure there is no overlap in services being provided or invoiced for.

- Reviewing invoices and verifying that delivery of services is rendered.
- Resolving issues or problems that arise during the contract.
- Measuring and tracking agency satisfaction with contractor performance.
- Sharing contractor performance information with other state agencies.
- Complying with federal and state rules and regulations pertaining to contract management.
- Documenting the contract completely to validate that effective contract management has occurred.

8.1.1 State Agency Staff Qualifications

Contract managers are responsible for managing personal service contracts from the beginning to the end of the contract cycle. The individuals or combination of individuals managing these contracts should have the knowledge, skills, and abilities to carry out their responsibilities.

To properly administer contracts, expertise is needed in contract law, contract drafting, and contract management and monitoring. It is also helpful if contracting staff have program experience in the program for which they are drafting or monitoring contracts. Whenever possible, staff should have the appropriate experience and training to properly manage personal service contracts.

8.1.2 Contract Manager "Don'ts"

Among the multiplicity of responsibilities contract managers have, they need to be mindful of the following:

- ✓ Don't instruct the contractor to begin work before the contract is executed and approved.
- ✓ Don't change the description, scope of work, period of performance, or costs of the contract without processing a written amendment.
- ✓ Don't direct the contractor to do work that is not specifically described in the contract.
- ✓ Don't sign a contractor's contract form without legal review.
- ✓ Don't authorize payment to the contractor for any work not performed satisfactorily.
- ✓ Don't pay for the same or similar services more than once.

8.2 Monitoring Contract Performance

Monitoring means any planned, ongoing, or periodic activity that measures and ensures contractor compliance with the terms, conditions, and requirements of a contract. The level of monitoring should be based on a risk assessment of the contractor's role in delivering the services and the contractor's ability to deliver under the terms of the contract.

8.2.1 Purpose

The purpose of monitoring is to ensure the contractor is:

Monitoring should be planned and coordinated with other state agencies when possible.

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

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

Monitoring may be viewed as:

- A preventative function.
- An opportunity to determine the need for technical assistance.
- A valuable source of information concerning the effectiveness and quality of services being provided.

The contract manager named in the contract provides the principal contract management and monitoring function. This individual is the primary contact point for communications between the agency and the contractor. The chief objective of the contract manager is to ensure that the contractor fulfills all contractual obligations in a quality manner within schedule and within budget. To accomplish this task, the contract manager must be completely knowledgeable of the terms of the contract

and maintain requisite controls throughout.

To effectively manage the contract, the contract manager should establish controls and monitor performance to ensure all work is completed within the requirements of the contract. Hours used against the plan and progress toward completion of the deliverables must be monitored. To get good results from a contractor, precise performance objectives should be set. The contractor needs to know exactly what is expected and when it is expected.

Contract management is often initiated by a "start-up" or initial meeting either on a formal or informal basis, between the contract manager and other agency staff and contractor representatives. From that point, the contract manager can exercise control through a series of progress reports or meetings. Checkpoints may reasonably be set up at least on a weekly basis at the start of the project and, after the first weeks, perhaps on a monthly basis, depending upon contract duration and complexity. Ensuring results and cost control within the project schedule are the chief objectives of contract management.

The contract manager needs to review the contractor's progress reports to determine if the amount of work accomplished and/or hours spent are in line with the contract schedule. Problem areas must be reported and corrective action taken. Progress reports assist the contract manager in gaining control of the project by being able to oversee the work and its progress.

Another aspect of contract management is the control of tasks or deliverables and due dates. The contractor has a right to expect timely responses to requests for information, which, if not provided, may result in unnecessary confusion and project delays. The contract manager is responsible to assure this does not occur. A simple tracking log may be all that is required to maintain a current status of activity and commitments.

By assuming a dynamic role in contract administration, the contract manager is more likely to discover and resolve problems in the early stages of the contract and avoid "crisis management" later. If there is a lack of quality or performance at any milestone point, this needs to be communicated to the contractor without delay and the appropriate changes or corrections made. This lends a posture of competent management throughout the project and provides the leadership required for successful contract completion.

Documentation of all monitoring should be maintained by the contract manager and is especially important where there are issues with the contractor's performance.

8.2.2 Monitoring Plan

Monitoring plans should be developed based on a thorough risk assessment.

One means of defining the specific monitoring methods appropriate to the particular service and the monitoring activities to be completed for an individual contractor is a monitoring plan. The plan can identify the tools to measure and assess contract performance and compliance, and the process for collecting information. Monitoring plans can also be used to decide which contracts to monitor, based on risk, and can also enable an agency to assess the contract management resources necessary to ensure adequate oversight. The level of monitoring should be commensurate with the importance or sensitivity of the service. Further, the plan can identify how monitoring activities might be coordinated between multiple state agencies providing funding to a contractor. Ideally, the monitoring plan will be prepared concurrent with the contract to ensure consistency and that contract requirements support the planned monitoring activities.

Not every contract will require the same level of monitoring. Contractors deemed high risk (refer to Section 2.3, Risk Assessment Approach to Contract Management) will require more monitoring than those deemed low risk. Where monitoring results demonstrate consistent satisfactory performance, the frequency and extent of monitoring may be adjusted accordingly. This can save the state money, reduce oversight burdens on the contractor, and recognize the contractor's good performance.

8.2.3 Monitoring Activities

Monitoring activities may include:

- **Periodic contractor reporting:** Require the contractor to submit progress reports or other appropriate data or reports, based on pre-defined criteria, and review the contractor's reports for verification of services provided and adherence to the contract. Substandard performance should be identified and addressed timely and appropriately.
- **Invoice reviews:** Compare billings with the terms agreed upon in the contract. Ensure the costs being charged are within the contract parameters.

- **Other periodic contact with contractor:** On site visits to maintain contact with the contractor to review progress on a regular basis. Good contract monitoring includes a continuous dialogue with the contractor.

Every communication with a contractor is an opportunity to monitor activity. Adequate documentation is essential for effective contract monitoring. Contract files should include copies of letters, meeting notes, and documentation of phone conversations as evidence that conscientious monitoring has occurred during the period of the contract.

Fiscal monitoring includes a review of the contractor’s invoices and supporting documentation. Before authorizing payment, contract managers should ensure the contractor has adequately demonstrated the satisfactory delivery of services as agreed to in the contract. Contract managers should verify the accuracy of the contractor's invoices and documentation, whether billings are consistent with contract requirements, and whether total payments are within the limits set by the contract. Contract managers should ensure that payment documentation is on file as required in the State Administrative and Accounting Manual (SAAM), section 85.32.30.

The method of contractor compensation selected may have an impact on the level and type of monitoring activities required to ensure that the state received the services contracted for, and, where specified, the funds are used as intended. Contracts with a cost reimbursement method of compensation, contracts that deliver multiple similar services, or contracts that use multiple funding sources (particularly those supported with federal funds) may require a higher level of monitoring than contracts using other methods of compensation. It will be necessary to monitor the costs that are reimbursed by the state agency. A higher level of monitoring may involve more testing, such as additional review of contractor reports and documentation, status meetings, or a combination of these methods.

Appropriate fiscal monitoring procedures should be determined as needed. Decisions regarding the scope and methods may take into account requirements established by the funding source, risk assessment results, and other relevant factors. For additional information on fiscal monitoring, consult with agency accounting or auditing staff.

8.3 Reviewing Invoices for Payment

Contract payment is the process by which the contractor submits invoices for reimbursement of service and receives payment. The contract manager, who is responsible for evaluating performance of the contract, must carefully review the contractor's requests for payment to verify the accuracy of all charges. The contract manager should determine if the number of hours or costs are commensurate with the services or deliverables received. The contract manager must also verify that rates for the contractor or subcontractor(s) are as stated in the contract. All documentation submitted must be verified to assure that all charges for the services are justified.

Travel expenses must also be verified to be consistent with contract terms. Most state contracts require reimbursement at current state travel regulation rates. The reasonableness of personal vehicle mileage should be checked if allowable under the contract terms. Other types of expenses charged should be verified to determine if they are allowable under the contract and, if so, whether they are appropriate. Receipts for single expenses in the amount of $50 or more should be attached for expenses, if required in the contract terms.

The contract manager must be conscientious to prevent any overpayment to the contractor. Contract overpayment is any payment in excess of the amount agreed upon for work performed or in violation of the terms of the contract. The contract manager must verify receipt of services in accordance with the contract prior to authorizing payment of invoices. If the services received are not acceptable or not in accordance with the contract terms, the contract manager should authorize payment only for those services received that are in accordance with the contract terms and conditions. The contract manager may withhold payment for all other charges until the contract terms and conditions have been met.

If the cost charges are acceptable, the contract manager signs the invoice as "approved for payment" and forwards it to the agency accounting or fiscal office for payment. No payment may be made to a contractor until invoice approval has been given with an authorizing signature obtained.

8.4 Corrective Action

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.

Corrective action is suggested when identified deficiencies are serious (for example, completion of key deliverables significantly below the quality level expected) or where less formal means have failed. Contract problems should be addressed immediately before they become recurring or serious. Contract managers should check to see if their agency or administrative unit has guidelines or directives for taking corrective action. If so, follow those guidelines or directives.

Serious contract problems that warrant corrective action include:

- Failure to produce or submit key deliverables.
- Significant audit or monitoring findings.
- Inferior quality of services.
- Failure to perform all or part of the contract.
- Late performance.
- Late submission of reports on a recurring basis.

For the staff completing corrective action with contractors, typical responsibilities include:

- Communicating contract remedies, as appropriate, when the contractor's performance is deficient.
- Seeking specialist advice, including legal counsel, when unsure of the rights of either party or the correct action.

To address minor problems or first occurrences of problems, contract managers should:

- Notify the contractor both verbally and in writing that a problem has been identified.
- Notify the contractor of expectations for correcting the problem or, if appropriate, ask the contractor to advise how the problem will be corrected.
- Specify a date or time when you expect the problem to be resolved or action taken.

- Document conversations with the contractor by a memo to the contract file, and/or follow up with a written letter to the contractor.

To address recurring or serious contract problems, contract managers should:

- Document conversations with the contractor and set time frames for corrective action.
- Check to see if applicable law or regulations direct how corrective action must occur. If so, comply with the legal requirements.
- Clearly identify the problem verbally and in writing. Be specific by using dates, number of occurrences, or other data that quantifies the problem. For example, "Paragraph 4 of your Contract states that you must submit a report by the 5th of each month. Your reports for May, June, and July were all submitted over 5 weeks after the due date, and we have not yet received your August report."
- Advise the contractor in writing about the requirements to correct the problem or, if appropriate, ask the contractor to submit a corrective action plan, including dates when corrective action will be completed. Set a deadline for submission of the plan. If this results in any changes to the contract, amend the contract.
- Specify a date or time frame for resolution. Unless a shorter or longer time frame is warranted, expect corrective action to be completed within one month.
- Track all corrective action to ensure completion.
- If a deadline is missed or corrective action is otherwise not completed, follow up in writing immediately. Notify the contractor that a deadline has been missed and ask the contractor when the action will be completed. Advise the contractor that failure to comply with the corrective action plan could lead to termination of the contract. Note: Failure by contract managers to follow up on corrective action could be interpreted later by the court as a waiver.

- Coordinate corrective action activities with the agency's Assistant Attorney General to avoid waiving any rights that might be available to the state.
- If the corrective action is successful in resolving problems, notify the contractor in writing that resolution has been achieved. Remember to document this in the contract file.

8.5 New Contract or Amendment?

The intent of RCW 39.29 is to establish a policy of open competition for all personal services procured by state agencies. Agencies should ensure that contract amendments are executed to support this policy intent. An agency is to balance its responsibility for securing outside contractual help in the most effective and economical manner possible, with its responsibility to ensure that services are competitively procured whenever appropriate.

Within the Scope of Work

Changes to contracts may be awarded as amendments, rather than as new contracts, only if the changes are **within** the general scope of work of the original contract. Work that is 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.

Changes within the scope of work that represent **substantial** changes in the quantity, duration, cost, or nature of the work may not be appropriate for contract amendments and may need to be addressed in a new procurement. When the agency includes in their solicitation document the option to extend the contract for additional periods or to add subsequent phases, such amendments, though they may represent substantial changes, are appropriate. They were specified in advance of contract award and all firms who competed were made aware of these potential additions to the contract.

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.

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 should carefully and cautiously examine the nature, extent and cost of the additional services and thoroughly justify the decision to award an amendment, rather than to conduct open competition for the services.

Agencies that amend contracts to add funding should also clarify what additional services will be provided for the additional dollars.

Therefore, in considering a change to an existing contract, the question arises as to whether the change should be implemented through an amendment or a new contract. As a general rule, the answer hinges on whether the amendment would change the nature of the overall work requirement. If the essential character of the work or contract purpose changes, a new contract should be awarded. An essential change occurs when the new tasks are unrelated to the previous tasks, or if the new tasks require significant re-definition of the tasks in the existing contract.

Other circumstances under which a new contract should be considered, rather than amending an existing contract, include:

- A significant change in contract price occurs. This would not be true when an original contract provided for subsequent phases that would logically be added by amendment.
- The changes are not within the scope of work of the original contract. Such changes would have the effect of making the work performed substantially different from the work the parties negotiated at the time the original contract was awarded. In addition, changes within the scope of work that represent substantial changes in the

quantity, duration, cost or nature of the work are generally not appropriate contract amendments and should be addressed in new procurements.

- Contractor lacks the skill or manpower to undertake the additional scope of work.
- Changes have occurred in the competitive factors since the original procurement.
- The contract extension period is for an inordinate length of time. A guideline would be to issue contracts that fall within the budget cycle of allocated funds in a biennium.

8.6 Processing Contract Amendments

As a project progresses, it may be advisable to make changes to the contract in order to enhance and improve the deliverables or service. Any written alteration to an existing contract is called a contract amendment or modification. Amendments should be executed by both parties before the contract period of performance ends and before the contractor begins work as authorized by the amendment.

The principle areas where changes occur and for which amendments are required are:

Scope of Work – This may include adding, modifying or deleting tasks, services or deliverables, or revising specifications. However, changes to the scope of work must be within the general scope of the original contract.

Cost – If the total amount of the contract is increased or decreased, a contract amendment is required.

Period of Performance – An extension to the end date of the contract is the most common change to the period of performance. A decrease in the period of performance would also require an amendment.

Documentation of amendments is extremely important. Execution of an amendment will minimize the misunderstandings, confusion and loss of momentum that can occur in the absence of a timely written record of changes. These types of amendments are considered "bilateral" amendments as they are formal changes to the contract and are signed by both parties.

Certain contract amendments are subject to filing with OFM and require a 10 working day waiting period before service under the amendment can begin. Allow enough advance time for the filing and approval process in order to minimize project impact.

Minor modifications that do not materially affect the scope of work or cost of the contract, such as address changes or staff changes, do not require a formal amendment, but should be documented in writing by memorandum or letter of agreement. Contract amendments should be discussed with the agency's Assistant Attorney General whenever clarification is required.

8.7 Contract Disputes

Contracts should contain a provision for resolution of disputes. A dispute involves a difference of opinion between the agency and contractor about contract terms or expectations.

The standard state contract "dispute" clause provides remedy via an informal dispute process. The disputing party must submit a written statement of the issues to the other party to initiate the dispute process. An agency representative, who has not been involved with the contract, coordinates between the disputing parties to seek satisfactory resolution. Each party is allowed to submit information in support of its position and to review and comment on the submission of the other party. A written decision is then provided to both parties. The informal dispute process is to precede any court action.

8.8 Contract Termination

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.

8.8.1 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 should be contacted when an agency is considering a termination for convenience.

8.8.2 Termination for Default

To terminate a contract based upon the other party's default, the party asserting default must demonstrate that there has been a material breach in one or more of the terms or conditions of the contract. 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. Writing clear and specific contract language will help avoid this type of action. Again, the agency's Assistant Attorney General should be consulted whenever an agency is considering invoking this clause.

If the contractor does not perform early in the contract period and the contract is terminated, the question may arise as to whether the project must be re-bid. Generally, the answer would be "yes". However, if the project is only a few months along, it may be advisable to offer the project to the second highest scoring bidder. A guideline is whether enough time has passed to alter the relative position of the bidders from the original procurement and whether the original bids have expired. Even when the bids have expired, a bidder may be contacted to determine whether they would be interested in a contract at the same terms as in their original bid. It is always advisable to check with the Attorney General's Office prior to proceeding with negotiations with another bidder.

8.9 Remedies and Sanctions

Remedy and sanction contract language permits the imposition of penalties or other terms against a party for noncompliance with the contract. The purpose of remedy and sanction provisions in a contract is to ensure all parties to the contract comply with the contract terms. Also, these provisions allow options to correct, sanction, or terminate a contractor who fails to adequately perform under the terms and conditions of the contract.

Considerations for remedy and sanction provisions:

- What mechanisms are in place to ensure contract compliance and performance?
- Do federal or state requirements exist that must be enforced?
- Which provisions will most likely encourage contract compliance and performance?
- Are alternative service contractors available?
- What are the implications of service disruption to clients?

Remedy and sanction provisions may include:

- Implementation of a corrective action plan after auditing or monitoring.
- Financial incentives or penalties, including the right to withhold payment.
- Federal debarment or suspension of the right to contract with an agency or agencies, if federal funds are involved.
- Preservation, protection, and return of information and property.
- Dispute resolution procedures.
- Suspension of the contract.
- Termination of the contract.

8.10 Suspected Criminal Activity

Some activities, such as over-billing by the contractor, may be either genuine errors by the contractor or, in extreme cases, could be the result of criminal activity. Generally, the contract manager should consider the contractor's explanations, while remaining sensitive to the possibility of fraud or related criminal activity. Although rare, the contract manager is often the first person with the opportunity to identify suspicious activity and should follow the agency's process for investigating when criminal activity is suspected.

State agency staff that conduct investigations are to participate in Investigator Training offered by the Department of Personnel as required by Executive Order 98-02.

8.11 Review and Implement Contractor's Final Product

Once the contract has ended, contract managers are responsible for:

- Following up on any activities that the contractor has completed (i.e., final report).
- Assessing whether contract objectives and outcomes were met.
- Ensuring all invoices are received and making final payment to the contractor.

When contract work is completed, the contractor may be required to submit a final 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 consulting 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.
- Other matters that should receive management emphasis or attention.

Once results have been accepted, an agency is responsible for correcting identified problems and/or implementing 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 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 develop a work plan detailing the steps necessary to implement the recommendations.

The work plan should take into consideration the following factors:

- 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?

8.12 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:

- Achievement of project goals and objectives.
- Timely completion of work.
- Quality of work measured against project objectives.
- Quantity of work.
- Professional manner and conduct.
- Working relationship with agency staff.
- Quality of project management.

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

8.13 Audit

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

Audits may be required by law, as is the case for federally funded contracts (refer to OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations at www.whitehouse.gov/OMB/circulars). When writing contracts, agencies should consider whether an A-133 audit is required and whether the A-133 audit meets the audit needs. If not, the agency may require an audit beyond those required by law. When law does not require an audit, state agencies should use a risk-assessment process 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 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.
- 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.

Questioned Costs

Questioned costs are normally those costs associated with an audit finding. These costs can be handled in several ways.

First, a decision on whether or not to pursue recovery of the questioned costs should be made. There may be good reasons not to pursue recovery of the questioned costs. While this is an option, compelling reasons and authority, generally based on Assistant Attorney General guidance, are required to exercise this option.

Options for recovering questioned costs may include:

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

Contracts using federal funds may require different processes. Also, it is important to note that when recovering questioned costs, the repayment by the contractor is generally not an allowable cost for current contracts.

Appendix A

Chapter 39.29 RCW

Chapter 39.29 RCW
PERSONAL SERVICE CONTRACTS

SECTIONS

39.29.003 Intent.
39.29.006 Definitions.
39.29.008 Limitation on personal service contracts.
39.29.011 Competitive solicitation required—Exceptions.
39.29.016 Emergency contracts.
39.29.018 Sole source contracts.
39.29.020 Compliance—Expenditure of funds prohibited—Civil penalty.
39.29.025 Amendments.
39.29.040 Exemption of certain contracts.
39.29.050 Contracts subject to requirements established under office of minority and women's business enterprises.
39.29.055 Contracts—Filing—Public inspection—Review and approval—Effective date.
39.29.065 Office of financial management to establish procedures—Adjustment of dollar thresholds.
39.29.068 Office of financial management to maintain list of contracts—Report to legislature (as amended by 1998 c 101).
39.29.068 Office of financial management to maintain list of contracts (as amended by 1998 c 245).
39.29.075 Summary reports on contracts.
39.29.080 Data generated under personal services contracts.
39.29.090 Contracts awarded by institutions of higher education.
39.29.100 Contract management – Uniform Guidelines – Guidebook
39.29.110 Use of Guidelines – Report to office of financial management.
39.29.120 Contract management – Training – Risk-based audits – Reports.
39.29.130 Contract audits and investigative findings – Report by the State Auditor and the Attorney General.
39.29.900 Severability—1987 c 414

RCW 39.29.003 Intent.
It is the intent of this chapter to establish a policy of open competition for all personal service contracts entered into by state agencies, unless specifically exempted under this chapter. It is further the intent to provide for legislative and executive review of all personal service contracts, to centralize the location of information about personal service contracts for ease of public review, and ensure proper accounting of personal services expenditures. [1998 c 101 § 1; 1993 c 433 § 1; 1987 c 414 § 1; 1979 ex.s. c 61 § 1.]

RCW 39.29.006 Definitions.
As used in this chapter:
(1) "Agency" means any state office or activity of the executive and judicial branches of state government, including state agencies, departments, offices, divisions, boards, commissions, and educational, correctional, and other types of institutions.
(2) "Client services" means services provided directly to agency clients including, but not limited to, medical and dental services, employment and training programs, residential care, and subsidized housing.

(3) "Competitive solicitation" means a documented formal process providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria which 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.
(4) "Consultant" means an independent individual or firm contracting with an agency to perform a service or render an opinion or recommendation according to the consultant's methods and 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.
(5) "Emergency" means a set of unforeseen circumstances beyond the control of the agency that either:
(a) Present a real, immediate threat to the proper performance of essential functions; or
(b) May result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.
(6) "Evidence of competition" means documentation demonstrating that the agency has solicited responses from multiple firms in selecting a consultant.
(7) "Personal service" means 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 under subsection (9) of this section. This term does include client services.
(8) "Personal service contract" means an agreement, or any amendment thereto, with a consultant for the rendering of personal services to the state, which is consistent with RCW 41.06.380 (after July 1, 2005, see 41.06.142).
(9) "Purchased services" means services provided by a vendor to accomplish routine, continuing and necessary functions. This term includes, but is not limited to, services acquired under RCW 43.19.190 or 43.105.041 for equipment maintenance and repair; operation of a physical plant; security; computer hardware and software maintenance; data entry; key punch services; and computer time-sharing, contract programming, and analysis.
(10) "Sole source" means a consultant providing professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The justification shall be based on either the uniqueness of the service or sole availability at the location required.
[1998 c 101 § 2; 1993 c 433 § 2; 1987 c 414 § 2; 1981 c 263 § 1; 1979 ex.s. c 61 § 2.]
[2002 c 354 § 235; 1998 c 101 § 2; 1993 c 433 § 2; 1987 c 414 § 2; 1981 c 263 § 1; 1979 ex.s. c 61 § 2.]

NOTES:
Short title -- Headings, captions not law -- Severability -- Effective dates -- 2002 c 354: See RCW 41.80.907 through 41.80.910.

RCW 39.29.008 Limitation on personal service contracts.
Personal services may be procured only to resolve a particular agency problem or issue or to expedite a specific project that is temporary in nature. An agency may procure personal services only if it documents that:
(1) The service is critical to agency responsibilities or operations, or is mandated or authorized by the legislature;
(2) Sufficient staffing or expertise is not available within the agency to perform the service; and
(3) Other qualified public resources are not available to perform the service. [1993 c 433 § 6.]

RCW 39.29.011 Competitive solicitation required -- Exceptions.
All personal service contracts shall be entered into pursuant to competitive solicitation, except for:
(1) Emergency contracts;
(2) Sole source contracts;
(3) Contract amendments;
(4) Contracts between a consultant and an agency of less than twenty thousand dollars. However, contracts of five thousand dollars or greater but less than twenty thousand dollars shall have documented evidence of competition. Agencies shall not structure contracts to evade these requirements; and
(5) Other specific contracts or classes or groups of contracts exempted from the competitive solicitation process by the director of the office of financial management when it has been determined that a competitive solicitation process is not appropriate or cost-effective.
[1998 c 101 § 3; 1987 c 414 § 3.]

RCW 39.29.016 Emergency contracts.
Emergency contracts shall be filed with the office of financial management and made available for public inspection within three working days following the commencement of work or execution of the contract, whichever occurs first. Documented justification for emergency contracts shall be provided to the office of financial management when the contract is filed.
[1998 c 101 § 4; 1996 c 288 § 29; 1987 c 414 § 4.]

RCW 39.29.018 Sole source contracts.
(1) Sole source contracts shall be filed with the office of financial management and made available for public inspection at least 10 working days prior to the proposed starting date of the contract. Documented justification for sole source contracts shall be provided to the office of financial management when the contract is filed. For sole source contracts of twenty thousand dollars or more, documented justification shall include evidence that the agency attempted to identify potential consultants by advertising through statewide or regional newspapers.
(2) The office of financial management shall approve sole source contracts of twenty thousand dollars or more before any such contract becomes binding and before any services may be performed under the contract. These requirements shall also apply to sole source contracts of less than twenty thousand dollars if the total amount of such contracts between an agency and the same consultant is twenty thousand dollars or more within a fiscal year. Agencies shall ensure that the costs, fees, or rates negotiated in filed sole source contracts of twenty thousand dollars or more are reasonable. [1998 c 101 § 5; 1996 c 288 § 30; 1993 c 433 § 5; 1987 c 414 § 5.]

RCW 39.29.020 Compliance -- Expenditure of funds prohibited -- Civil penalty.
No state officer or activity of state government subject to this chapter shall expend any funds for personal service contracts unless the agency has complied with the competitive procurement and other requirements of this chapter. The state officer or employee executing the personal service contracts shall be responsible for compliance with the requirements of this chapter. Failure to comply with the requirements of this chapter shall subject the state officer or employee to a civil penalty in the amount of three hundred dollars. A consultant who knowingly violates this chapter in seeking or performing work under a personal services

contract shall be subject to a civil penalty of three hundred dollars or twenty-five percent of the amount of the contract, whichever is greater. The State Auditor is responsible for auditing violations of this chapter. The Attorney General is responsible for prosecuting violations of this chapter. [1987 c 414 § 6; 1974 ex.s. c 191 § 2.]

RCW 39.29.025 Amendments.

(1) Substantial changes in either the scope of work specified in the contract or in the scope of work specified in the formal solicitation document must generally be awarded as new contracts. Substantial changes executed by contract amendments must be submitted to the office of financial management, and are subject to approval by the office of financial management.

(2) An amendment or amendments to personal service contracts, if the value of the amendment or amendments, whether singly or cumulatively, exceeds fifty percent of the value of the original contract must be provided to the office of financial management.

(3) The office of financial management shall approve amendments provided to it under this section before the amendments become binding and before services may be performed under the amendments.

(4) The amendments must be filed with the office of financial management and made available for public inspection at least 10 working days prior to the proposed starting date of services under the amendments.

(5) The office of financial management shall approve amendments provided to it under this section only if they meet the criteria for approval of the amendments established by the director of the office of financial management.

[1998 c 101 § 6; 1996 c 288 § 31; 1993 c 433 § 3.]

RCW 39.29.040 Exemption of certain contracts.

This chapter does not apply to:

(1) Contracts specifying a fee of less than five thousand dollars if the total of the contracts from that agency with the contractor within a fiscal year does not exceed five thousand dollars;

(2) Contracts awarded to companies that furnish a service where the tariff is established by the utilities and transportation commission or other public entity;

(3) Intergovernmental agreements awarded to any governmental entity, whether federal, state, or local and any department, division, or subdivision thereof;

(4) Contracts awarded for services to be performed for a standard fee, when the standard fee is established by the contracting agency or any other governmental entity and a like contract is available to all qualified applicants;

(5) Contracts for services that are necessary to the conduct of collaborative research if prior approval is granted by the funding source;

(6) Contracts for client services except as otherwise indicated in this chapter;

(7) Contracts for architectural and engineering services as defined in RCW 39.80.020, which shall be entered into under Chapter 39.80 RCW;

(8) Contracts for the employment of expert witnesses for the purposes of litigation;

(9) Contracts for bank supervision authorized under RCW 30.38.040; and

(10) Contracts for interpreter services and interpreter brokerage services on behalf of limited-English speaking or sensory-impaired applicants and recipients of public assistance.

[2002 c 260 § 11; 2002 c 200 § 2; 1998 c 101 § 7; 1996 c 2 § 19; 1995 c 80 § 1; 1987 c 414 § 7; 1986 c 33 § 3; 1979 ex.s. c 61 § 4.]

NOTES:
Reviser's note: This section was amended by 2002 c 200 § 2 and by 2002 c 260 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings -- 2002 c 200: "The legislature finds that limited-English speaking and sensory-impaired applicants and recipients of public assistance often require interpreter services in order to communicate effectively with employees of the department of social and health services, medical professionals, and other social services personnel. The legislature further finds that interpreter services can be procured and delivered through a variety of different means. It is in the public's interest for the department to deliver interpreter services, to the extent funds are available, by the means which it determines most cost-effectively ensure that limited-English speaking and sensory-impaired persons are able to communicate with department employees and service providers." [2002 c 200 § 1.]
Severability -- 1996 c 2: See RCW 30.38.900.

RCW 39.29.050 Contracts subject to requirements established under office of minority and women's business enterprises.
All contracts entered into under this chapter on or after September 1, 1983, are subject to the requirements established under Chapter 39.19 RCW.
[1983 c 120 § 12.]

NOTES:
Effective date -- Applicability -- Severability -- Conflict with federal requirements -- 1983 c 120: See RCW 39.19.910, 39.19.920.

RCW 39.29.055 Contracts -- Filing -- Public inspection -- Review and approval -- Effective date.
(1) Personal service contracts subject to competitive solicitation shall be (a) filed with the office of financial management and made available for public inspection; and (b) reviewed and approved by the office of financial management when those contracts provide services relating to management consulting, organizational development, marketing, communications, employee training, or employee recruiting.
(2) Personal service contracts subject to competitive solicitation that provide services relating to management consulting, organizational development, marketing, communications, employee training, or employee recruiting shall be made available for public inspection at least 10 working days before the proposed starting date of the contract. All other contracts shall be effective no earlier than the date they are filed with the office of financial management.
[1998 c 101 § 8; 1996 c 288 § 32; 1993 c 433 § 7.]

RCW 39.29.065 Office of financial management to establish procedures -- Adjustment of dollar thresholds.
To implement this chapter, the director of the office of financial management shall establish procedures for the competitive solicitation and award of personal service contracts, recordkeeping requirements, and procedures for the reporting and filing of contracts. For reporting purposes, the director may establish categories for grouping of contracts. The procedures required under this section shall also include the criteria for amending personal

service contracts. At the beginning of each biennium, the director may, by administrative policy, adjust the dollar thresholds prescribed in RCW 39.29.011, 39.29.018, 39.29.040, and *39.29.068 to levels not to exceed the percentage increase in the implicit price deflator. Adjusted dollar thresholds shall be rounded to the nearest five hundred dollar increment.
[1998 c 101 § 9; 1987 c 414 § 8.]

NOTES:
Reviser's note: The dollar thresholds prescribed in RCW 39.29.068 were amended by 1998 c 101 § 10, and removed by 1998 c 245 § 33.

RCW 39.29.068 Office of financial management to maintain list of contracts -- Report to legislature *(as amended by 1998 c 101)*.
The office of financial management shall maintain a publicly available list of all personal service contracts entered into by state agencies during each fiscal year. The list shall identify the contracting agency, the contractor, the purpose of the contract, effective dates and periods of performance, the cost of the contract and funding source, any modifications to the contract, and whether the contract was competitively procured or awarded on a sole source basis. The office of financial management shall also ensure that state accounting definitions and procedures are consistent with RCW 39.29.006 and permit the reporting of personal services expenditures by agency and by type of service. Designations of type of services shall include, but not be limited to, management and organizational services, legal and expert witness services, financial services, computer and information services, social or technical research, marketing, communications, and employee training or recruiting services. The office of financial management shall report annually to the fiscal committees of the Senate and House of Representatives on sole source contracts filed under this chapter. The report shall describe: (1) The number and aggregate value of contracts for each category established in this section; (2) the number and aggregate value of contracts of five thousand dollars or greater but less than twenty thousand dollars; (3) the number and aggregate value of contracts of twenty thousand dollars or greater; (4) the justification provided by agencies for the use of sole source contracts; and (5) any trends in the use of sole source contracts.
[1998 c 101 § 10; 1993 c 433 § 8.]

RCW 39.29.068 Office of financial management to maintain list of contracts *(as amended by 1998 c 245)*.
The Office of Financial Management shall maintain a publicly available list of all personal service contracts entered into by state agencies during each fiscal year. The list shall identify the contracting agency, the contractor, the purpose of the contract, effective dates and periods of performance, the cost of the contract and funding source, any modifications to the contract, and whether the contract was competitively procured or awarded on a sole source basis. The office of financial management shall also ensure that state accounting definitions and procedures are consistent with RCW 39.29.006 and permit the reporting of personal services expenditures by agency and by type of service. Designations of type of services shall include, but not be limited to, management and organizational services, legal and expert witness services, financial services, computer and information services, social or technical research, marketing, communications, and employee training or recruiting services. [1998 c 245 § 33; 1993 c 433 § 8.]

NOTES:
Reviser's note: RCW 39.29.068 was amended twice during the 1998 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

RCW 39.29.075 Summary reports on contracts.
As requested by the legislative auditor, the office of financial management shall provide information on contracts filed under this chapter for use in preparation of summary reports on personal services contracts.
[1987 c 414 § 9.]

RCW 39.29.080 Data generated under personal services contracts.
A state agency may not enter into a personal services contract with a consultant under which the consultant could charge additional costs to the agency, the joint legislative audit and review committee, or the State Auditor for access to data generated under the contract. A consultant under such contract shall provide access to data generated under the contract to the contracting agency, the joint legislative audit and review committee, and the State Auditor. For purposes of this section, "data" includes all information that supports the findings, conclusions, and recommendations of the consultant's reports, including computer models and the methodology for those models.
[1997 c 373 § 1.]

RCW 39.29.090 Contracts awarded by institutions of higher education.
Personal service contracts awarded by institutions of higher education from non-state funds do not have to be filed in advance and approved by the office of financial management. Any such contract is subject to all other requirements of this chapter, including the requirements under *RCW 39.29.068 for annual reporting of personal service contracts to the office of financial management.
[1998 c 101 § 11.]

NOTES:
Reviser's note: Annual reporting requirements under RCW 39.29.068 were amended by 1998 c 101 § 10, and removed by 1998 c 245 § 33.

RCW 39.29.100 Contract management -- Uniform guidelines -- Guidebook.
(1) The office of financial management shall adopt uniform guidelines for the effective and efficient management of personal service contracts and client service contracts by all state agencies. The guidelines must, at a minimum, include:
(a) Accounting methods, systems, measures, and principles to be used by agencies and contractors;
(b) Pre-contract procedures for selecting potential contractors based on their qualifications and ability to perform;
(c) Incorporation of performance measures and measurable benchmarks in contracts, and the use of performance audits;
(d) Uniform contract terms to ensure contract performance and compliance with state and federal standards;

(e) Proper payment and reimbursement methods to ensure that the state receives full value for taxpayer moneys, including cost settlements and cost allowance;
(f) Post-contract procedures, including methods for recovering improperly spent or overspent moneys for disallowance and adjustment;
(g) Adequate contract remedies and sanctions to ensure compliance;
(h) Monitoring, fund tracking, risk assessment, and auditing procedures and requirements;
(i) Financial reporting, record retention, and record access procedures and requirements;
(j) Procedures and criteria for terminating contracts for cause or otherwise; and
(k) Any other subject related to effective and efficient contract management.

(2) The office of financial management shall submit the guidelines required by subsection of this section to the governor and the appropriate standing committees of the legislature no later than December 1, 2002.

(3) The office of financial management shall publish a guidebook for use by state agencies containing the guidelines required by subsection (1) of this section.

[2002 c 260 § 7.]

NOTES:

Effective date -- 2002 c 260 § 7: "Section 7 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 29, 2002]." [2002 c 260 § 12.]

RCW 39.29.110 Use of guidelines -- Report to office of financial management. *(Effective January 1, 2003.)*

(1) A state agency entering into or renewing personal service contracts or client service contracts shall follow the guidelines required by RCW 39.29.100.

(2) A state agency that has entered into or renewed personal service contracts or client service contracts during a calendar year shall, on or before January 1st of the following calendar year, provide the office of financial management with a report detailing the procedures the agency employed in entering into, renewing, and managing the contracts.

(3) The provisions of this section apply to state agencies entering into or renewing contracts after January 1, 2003.

[2002 c 260 § 8.]

NOTES:

Effective date -- 2002 c 260 §§ 8 and 9: "Sections 8 and 9 of this act take effect January 1, 2003." [2002 c 260 § 13.]

RCW 39.29.120 Contract management -- Training -- Risk-based audits -- Reports. *(Effective January 1, 2003.)*

(1) The office of financial management shall provide a training course for agency personnel responsible for executing and managing personal service contracts and client service contracts. The course must contain training on effective and efficient contract management under the guidelines established under RCW 39.29.100. State agencies shall require agency employees responsible for executing or managing personal service contracts and client service contracts to complete the training course to the satisfaction of the office of financial management. Beginning January 1, 2004, no agency employee may execute or manage personal service contracts or client service contracts unless the employee has completed the training course. Any request for exception to this requirement shall be submitted to the office of financial management in writing and shall

be approved by the office of financial management prior to the employee executing or managing the contract.

(2)(a) The office of financial management shall conduct risk-based audits of the contracting practices associated with individual personal service and client service contracts from multiple state agencies to ensure compliance with the guidelines established in RCW 39.29.110. The office of financial management shall conduct the number of audits deemed appropriate by the director of the office of financial management based on funding provided.

(b) The office of financial management shall forward the results of the audits conducted under this section to the governor, the appropriate standing committees of the legislature, and the joint legislative audit and review committee.

[2002 c 260 § 9.]

NOTES:

Effective date -- 2002 c 260 §§ 8 and 9: See note following RCW 39.29.110.

RCW 39.29.130 Contract audits and investigative findings -- Report by the State Auditor and Attorney General.

The State Auditor and the Attorney General shall annually by November 30th of each year provide a collaborative report of contract audit and investigative findings, enforcement actions, and the status of agency resolution to the governor and the policy and fiscal committees of the legislature.

[2002 c 260 § 10.]

RCW 39.29.900 Severability -- 1987 c 414.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1987 c 414 § 13.]

Appendix B

Sample Interagency Agreement

S A M P L E

IAA No. _____

INTERAGENCY AGREEMENT
BETWEEN
THE STATE OF WASHINGTON

_____

AND

_____

THIS AGREEMENT is made and entered into by and between the DEPARTMENT OF _____ _____, hereinafter referred to as "_____," and the _____ _____ hereinafter referred to as the "_____."

IT IS THE PURPOSE OF THIS AGREEMENT to provide

THEREFORE, IT IS MUTUALLY AGREED THAT:

STATEMENT OF WORK

The _____ shall furnish the necessary personnel, equipment, material and/or service(s) and otherwise do all things necessary for or incidental to the performance of the work set forth in Attachment "A" attached hereto and incorporated herein.

PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this Agreement shall commence on _____ _____, or date of execution, whichever comes later, and be completed on _____, unless terminated sooner as provided herein.

PAYMENT

Compensation for the work provided in accordance with this Agreement has been established under the terms of RCW 39.34.130. The parties have determined that the cost of accomplishing the work herein will not exceed $_____. Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree to a higher amount. Compensation for service(s) shall be based on the following rates or in accordance with the following terms, or as set forth in accordance with the budget in Attachment "B" which is attached hereto and incorporated herein.

BILLING PROCEDURE

The _____ shall submit properly completed invoices *[NOTE: Identify how often invoices should be submitted and to whom]*. Payment to the _____ for approved and completed work will be made by warrant or account transfer by the _____ within 30 days of receipt of the invoice. Upon expiration of the

Agreement, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.

RECORDS MAINTENANCE

The parties to this Agreement shall each maintain books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the service(s) described herein. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

RIGHTS IN DATA

Unless otherwise provided, data which originates from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the _____. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

TERMINATION

Either party may terminate this Agreement upon 30 days' prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

TERMINATION FOR CAUSE

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, agreement terms and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

GOVERNANCE

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

a. Applicable state and federal statutes and rules;
b. Statement of work; and
c. Any other provisions of the agreement, including materials incorporated by reference.

ASSIGNMENT

The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

WAIVER

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this Agreement are declared to be severable.

APPENDIX B

ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

CONTRACT MANAGEMENT

The program manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

The Program Manager for _____ is: *[Name, e-mail, address and phone number]*

The Program Manager for _____ is: *[Name, e-mail, address and phone number]*

IN WITNESS WHEREOF, the parties have executed this Agreement.

State of Washington (Agency Name)	State of Washington (Agency Name)
_____ Signature	_____ Signature
_____ Title Date	_____ Title Date

APPROVED AS TO FORM:

ATTORNEY GENERAL'S OFFICE

Appendix C

Sample Request for Proposals

S A M P L E

STATE OF WASHINGTON

_____

_____, WASHINGTON

REQUEST FOR PROPOSALS
RFP NO. _____

If you download this RFP from the (agency name) website located at (website address), you are responsible for sending your name, address, e-mail address, and telephone number to the RFP Coordinator in order for your organization to receive any RFP amendments or bidder questions/agency answers.

PROJECT TITLE:

PROPOSAL DUE DATE:
Day _____ Date_____ at (time) a.m. or p.m. local time in (city), Washington.

EXPECTED TIME PERIOD FOR CONTRACT:
(Date) to (Date). (Agency name) reserves the right at its discretion, to extend the contract for up to three additional one-year periods. (optional)

CONSULTANT ELIGIBILITY: This procurement is open to those consultants that satisfy the minimum qualifications stated herein and that are available for work in Washington State.

CONTENTS OF THE REQUEST FOR PROPOSALS:

1. Introduction
2. General Information for Consultants
3. Proposal Contents
4. Evaluation and Award
5. Exhibits
   A. Certifications and Assurances
   B. Personal Service Contract with General Terms and Conditions

TABLE OF CONTENTS

1. Introduction C-3

1.1 Purpose and Background C-3
1.2 Objective C-3
1.3 Minimum Qualifications C-3
1.4 Funding C-3
1.5 Period of Performance C-3
1.6 Definitions C-3
1.7 ADA C-4

2. General Information for Consultants C-4

2.1 RFP Coordinator C-4
2.2 Estimated Schedule of Procurement Activities C-4
2.3 Pre-proposal Conference C-5
2.4 Submission of Proposals C-5
2.5 Proprietary Information/Public Disclosure C-6
2.6 Revisions to the RFP C-6
2.7 Minority & Women-Owned Business Participation C-6
2.8 Acceptance Period C-7
2.9 Responsiveness C-7
2.10 Most Favorable Terms C-7
2.11 Contract and General Terms & Conditions C-7
2.12 Costs to Propose C-7
2.13 No Obligation to Contract C-7
2.14 Rejection of Proposals C-8
2.15 Commitment of Funds C-8
2.16 Electronic Payment C-8
2.17 Insurance Coverage C-8

3. Proposal Contents C-9

3.1 Letter of Submittal C-10
3.2 Technical Proposal C-10
3.3 Management Proposal C-11
3.4 Cost Proposal C-12

4. Evaluation and Contract Award C-13

4.1 Evaluation Procedure C-13
4.2 Clarification of Proposal C-13
4.3 Evaluation Weighting and Scoring C-13
4.4 Oral Presentations may be Required C-14
4.5 Notification to Proposers C-14
4.6 Debriefing of Unsuccessful Proposers C-14
4.7 Protest Procedure C-15

5. RFP Exhibits … C-16

Exhibit A Certifications and Assurances
Exhibit B Personal Service Contract Format including General Terms and Conditions (GT&Cs)

1. INTRODUCTION

1.1 PURPOSE AND BACKGROUND

The Washington State _____, hereafter called "AGENCY," is initiating this Request for Proposals (RFP) to solicit proposals from firms interested in participating on a project to:

[***NOTE**: Provide a clear statement of the project's purpose, present system or process and perceived need, as well as any other background about the project which may be appropriate.]*

1.2 OBJECTIVE

[***NOTE**: Explain what the contract is intended to accomplish]*

1.3 MINIMUM QUALIFICATIONS

The Consultant must be licensed to do business in the state of Washington. The Consultant must have ____ years experience in _____
_____ .

1.4 FUNDING

*[**NOTE**: This section is optional. In many instances, an Agency may not wish to disclose the project budget.]*

The AGENCY has budgeted an amount not to exceed $..... for this project. (optional) Proposals in excess of $_____ will be rejected as non-responsive and will not be evaluated.

Any contract awarded as a result of this procurement is contingent upon the availability of funding. (optional) In the event additional funding becomes available, any contract awarded may be renegotiated to provide for additional related services.

1.5 PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFP is tentatively scheduled to begin on or about _____ and to end on _____. Amendments extending the period of performance, if any, shall be at the sole discretion of the AGENCY.

*[**NOTE**: You may also include specific information on contract extensions. For example: "The AGENCY reserves the right to extend the contract for two one-year periods."]*

1.6 DEFINITIONS

Definitions for the purposes of this RFP include:

Agency – The _____ is the agency of the state of Washington that is issuing this RFP.

Consultant – Individual or company submitting a proposal in order to attain a contract with the AGENCY.

Contractor – Individual or company whose proposal has been accepted by the AGENCY and is awarded a fully executed, written contract.

Proposal – A formal offer submitted in response to this solicitation.

Request for Proposals (RFP) – Formal procurement document in which a service or need is identified but no specific method to achieve it has been chosen. The purpose of an RFP is to permit the consultant community to suggest various approaches to meet the need at a given price.

1.7 ADA

The AGENCY complies with the Americans with Disabilities Act (ADA). Consultants may contact the RFP Coordinator to receive this Request for Proposals in Braille or on tape.

2. GENERAL INFORMATION FOR CONSULTANTS

2.1 RFP COORDINATOR

The RFP Coordinator is the sole point of contact in the AGENCY for this procurement. All communication between the Consultant and the AGENCY upon receipt of this RFP shall be with the RFP Coordinator, as follows:

Name	
Address	
City, State, Zip Code	
Phone Number	
Fax Number	
E-Mail Address	

Any other communication will be considered unofficial and non-binding on the AGENCY. Consultants are to rely on written statements issued by the RFP Coordinator. Communication directed to parties other than the RFP Coordinator may result in disqualification of the Consultant.

2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Proposals	
Question and answer period	
Pre-proposal conference (if applicable)	
Last date for questions regarding RFP (optional)	
Issue addendum to RFP (if applicable)	
Proposals due	
Evaluate proposals	
Conduct oral interviews with finalists, if required	
Announce “Apparent Successful Contractor” and send notification via fax or e-mail to unsuccessful proposers	
Hold debriefing conferences (if requested)	
Negotiate contract	
File contract with OFM (if required)	
Begin contract work	

The AGENCY reserves the right to revise the above schedule.

*[**NOTE**: Agencies may also require Consultants to submit a Letter of Intent to Propose or other similar requirements, which would then be included in the schedule.]*

2.3 PRE-PROPOSAL CONFERENCE *(OPTIONAL PROVISION)*
A pre-proposal conference is scheduled to be held on DATE at TIME a.m./p.m., local time, in _____ADDRESS_____. The location of the pre-proposal conference is _____. All prospective Proposers should attend; however, attendance is not mandatory. Written questions may be submitted in advance to the RFP Coordinator. The AGENCY shall be bound only to written answers to questions. Any oral responses given at the pre-proposal conference shall be considered unofficial.

Questions arising at the pre-proposal conference or in subsequent communication with the RFP Coordinator will be documented and answered in written form. A copy of the questions and answers in the form of an Addendum to the RFP will be sent to each prospective consultant, who received the RFP or made the RFP Coordinator aware of its interest in this procurement.

Within five business days of the pre-proposal conference, a copy of the questions and answers from the pre-proposal conference will be placed on the AGENCY web site as follows: _____.

[NOTE: Attendance at the pre-proposal conference may be mandatory dependent upon the project. Also, directions to the pre-proposal conference should be attached as an exhibit or included in the cover letter sent with the RFP.]

2.4 SUBMISSION OF PROPOSALS
Proposals may be submitted in hard copy or electronically. Proposals may not be transmitted via facsimile.

If submitting the proposal in hard copy, the following information is applicable. Consultants are required to submit _____(__) copies of their proposal. One (1) copy must have original signatures and _____(__) copies can have photocopies signatures. The proposal, whether mailed or hand delivered, must be received by the AGENCY no later than 4:30 p.m. local time in (city name), Washington, on (date). The proposal is to be sent to the RFP Coordinator at the address noted in Section _____. The envelope should be clearly marked to the attention of the RFP Coordinator, who is the agency's sole point of contact for this procurement.

Consultants mailing proposals should allow normal mail delivery time to ensure timely receipt of their proposals by the RFP Coordinator. Consultants hand delivering proposals should allow time for traffic congestion. Consults assume the risk for the method of delivery chosen. The AGENCY assumes no responsibility for delays caused by any delivery service.

If submitting the proposal electronically, the following information is applicable. Proposals being submitted electronically must be submitted as an attachment to an e-mail to (RFP Coordinator name) at (e-mail address). Proposals must arrive by 4:30 p.m. local time in (city name), Washington on (date). Attachments to e-mail shall be on Microsoft Word software. If applicable to your agency, use the following: Zipped files cannot be received by (agency name) and cannot be used for submission of proposals. Consultants submitting proposals via e-mail shall also send copies of the cover submittal letter and the certifications and assurances from with original signatures to the RFP Coordinator. The AGENCY does not assume responsibility for any problems in the e-mail.

Late proposals will not be accepted and will be automatically disqualified from further consideration. The proposals must respond to the procurement requirements. Do not respond by referring to material presented elsewhere. The proposal must be complete and must stand on its own merits. Failure to respond to any portion of the procurement document may result in rejection of the proposal as non-responsive. All proposals and any accompanying documentation become the property of the AGENCY and will not be returned.

2.5 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE

Materials submitted in response to this competitive procurement shall become the property of the AGENCY.

All proposals received shall remain confidential until the contract, if any, resulting from this RFP, is signed by the Director of the AGENCY and the apparent successful Contractor; thereafter, the proposals shall be deemed public records as defined in RCW 42.17.250 to 42.17.340, "Public Records."

Any information in the proposal that the Consultant desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.17.250 to 42.17.340 must be clearly designated. The page must be identified and the particular exception from disclosure upon which the Consultant is making the claim. Each page claimed to be exempt from disclosure must be clearly identified by the word "Confidential" printed on the lower right hand corner of the page.

The AGENCY will consider a Consultant's request for exemption from disclosure; however, the AGENCY will make a decision predicated upon Chapter 42.17 RCW and Chapter 143-06 of the Washington Administrative Code. Marking the entire proposal exempt from disclosure will not be honored. The Consultant must be reasonable in designating information as confidential. If any information is marked as proprietary in the proposal, such information will not be made available until the affected proposer has been given an opportunity to seek a court injunction against the requested disclosure.

A charge will be made for copying and shipping, as outlined in RCW 42.17.300. No fee shall be charged for inspection of contract files, but twenty-four (24) hours notice to the RFP Coordinator is required. All requests for information should be directed to the RFP Coordinator.

2.6 REVISIONS TO THE RFP

In the event it becomes necessary to revise any part of this RFP, addenda will be provided via e-mail or in hardcopy to all who were sent the RFP.

Optional Paragraph if website used:
In the event it becomes necessary to revise any part of this RFP, addenda will be published on the AGENCY web site, as follows:_____. [*NOTE: or mailed to those who either received the RFP or who responded with a Letter of Intent to Propose, as applicable]* For this purpose, the published questions and answers from the pre-proposal conference and any other pertinent information shall be considered an addendum to the RFP and also placed on the web site.

If you downloaded this RFP from the (agency name) website located at (agency web address), you are responsible for sending your name, address, e-mail address and telephone number to the RFP Coordinator in order for your organization to receive any RFP amendments or bidder questions/agency answers.

The AGENCY also reserves the right to cancel or to reissue the RFP in whole or in part, prior to execution of a contract.

2.7 MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION

In accordance with the legislative findings and policies set forth in Chapter 39.19 RCW, the state of Washington encourages participation in all of its contracts by firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis. However, no preference will be included in the evaluation of proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award, and proposals will not be rejected or considered non-responsive

on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply.

The established annual procurement participation goals for MBE are 10 percent and for WBE, 4 percent, for this type of project. These goals are voluntary. Bidders may contact OMWBE at 360/753-9693 to obtain information on certified firms.

2.8 ACCEPTANCE PERIOD

Proposals must provide 60 days for acceptance by AGENCY from the due date for receipt of proposals.

2.9 RESPONSIVENESS

All proposals will be reviewed by the RFP Coordinator to determine compliance with administrative requirements and instructions specified in this RFP. The Consultant is specifically notified that failure to comply with any part of the RFP may result in rejection of the proposal as non-responsive.

The AGENCY also reserves the right, however, at its sole discretion to waive minor administrative irregularities.

2.10 MOST FAVORABLE TERMS

The AGENCY reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms that the Consultant can propose. There will be no best and final offer procedure. The AGENCY does reserve the right to contact a Consultant for clarification of its proposal during the evaluation process. In addition, if the Consultant is selected as the apparent successful contractor, the AGENCY reserves the right to enter into contract negotiations with the apparent successful contractor, which may include discussion regarding the terms of the proposal. Contract negotiations may result in incorporation of some or all of the Consultant's proposal. The Consultant should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. It is also understood that the proposal will become part of the official procurement file.

2.11 CONTRACT AND GENERAL TERMS & CONDITIONS

The apparent successful contractor will be expected to enter into a contract that is substantially the same as the sample contract and its general terms and conditions attached as Exhibit B. In no event is a Consultant to submit its own standard contract terms and conditions in response to this solicitation. The Consultant may submit exceptions as allowed in the Certifications and Assurances section, Exhibit A to this solicitation. The AGENCY will review requested exceptions and accept or reject the same at its sole discretion.

2.12 COSTS TO PROPOSE

The AGENCY will not be liable for any costs incurred by the Consultant in preparation of a proposal submitted in response to this RFP, in conduct of a presentation, or any other activities related to responding to this RFP

2.13 NO OBLIGATION TO CONTRACT

This RFP does not obligate the state of Washington or the AGENCY to contract for services specified herein.

2.14 REJECTION OF PROPOSALS

The AGENCY reserves the right at its sole discretion to reject any and all proposals received without penalty and not to issue a contract as a result of this RFP.

2.15 COMMITMENT OF FUNDS

The Director of the AGENCY or his delegate are the only individuals who may legally commit the AGENCY to the expenditures of funds for a contract resulting from this RFP. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

2.16 ELECTRONIC PAYMENT

The state of Washington prefers to utilize electronic payment in its transactions. The successful contractor will be provided a form to complete with the contract to authorize such payment method.

2.17 INSURANCE COVERAGE

The Contractor is to furnish the Agency with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below.

The Contractor shall, at its own expense, obtain and keep in force insurance coverage that shall be maintained in full force and effect during the term of the contract. The Contractor shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to the Agency within fifteen (15) days of the contract effective date.

Liability Insurance

1) Commercial General Liability Insurance: Contractor shall maintain general liability (CGL) insurance and, if necessary, commercial umbrella insurance, with a limit of not less than $1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the “each occurrence” limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the “each occurrence” limit. CGL insurance shall be written on ISO occurrence from CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insured’s (cross liability) condition.

   Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

2) Business Auto Policy: As applicable, the Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than $1,000,000 per accident. Such insurance shall cover liability arising out of “Any Auto.” Business auto coverage shall be written on ISO form CA 00 01, 1990 or later edition, or substitute liability form providing equivalent coverage.

Employers Liability (“Stop Gap”) Insurance

In addition, the Contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than $1,000,000 each accident for bodily injury by accident or $1,000,000 each employee for bodily injury by disease.

Additional Provisions

Above insurance policy shall include the following provisions:

1. **Additional Insured.** The state of Washington, [agency name], its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.
2. **Cancellation**. State of Washington, [*agency name*], shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications. Insurers subject to 48.18 RCW (Admitted and Regulation by the Insurance Commissioner): The insurer shall give the State 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation. Insurers subject to 48.15 RCW (Surplus lines): The State shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.
3. **Identification**. Policy must reference the State's contract number and the agency name.
4. **Insurance Carrier Rating**. All insurance and bonds should be issued by companies admitted to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by [*Agency Name*] Risk Manager, or the Risk Manager for the state of Washington, before the contract is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.
5. **Excess Coverage**. By requiring insurance herein, the State does not represent that coverage and limits will be adequate to protect Contractor, and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the State in this contract.

Worker's Compensation Coverage

The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. The State will not be held responsive in any way for claims filed by the Contractor or their employees for services performed under the terms of this contract.

3. PROPOSAL CONTENTS

*[**NOTE**: Revise language for electronic proposals.]*

Proposals must be submitted on eight and one-half by eleven (8 1/2 x 11) inch paper with tabs separating the major sections of the proposal. The four major sections of the proposal are to be submitted in the order noted below:

1. Signed or Certified Letter of Submittal, including signed Certifications and Assurances (Exhibit A to this RFP).
2. Technical Proposal.
3. Management Proposal.
4. Cost Proposal.

Proposals must provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the proposal, but should assist the Consultant in preparing a thorough response.

Items in this section marked "mandatory" must be included as part of the proposal for the proposal to be considered responsive; however, these items are not scored. Items marked "scored" are those that are awarded points as part of the evaluation conducted by the evaluation team.

3.1 LETTER OF SUBMITTAL (MANDATORY)

The Letter of Submittal and the attached Certifications and Assurances form (Exhibit A to this RFP) must be signed and dated by a person authorized to legally bind the Consultant to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Along with introductory remarks, the Letter of Submittal is to include by attachment the following information about the Consultant and any proposed subcontractors:

1. Name, address, principal place of business, telephone number, and fax number/e-mail address of legal entity or individual with whom contract would be written.
2. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.).
3. Legal status of the Consultant (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists.
4. Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the state of Washington Department of Revenue.
5. Location of the facility from which the Consultant would operate.
6. Identify any State employees or former State employees employed or on the firm's governing board as of the date of the proposal. Include their position and responsibilities within the Consultant's organization. If following a review of this information, it is determined by the AGENCY that a conflict of interest exists, the Consultant may be disqualified from further consideration for the award of a contract.

3.2 TECHNICAL PROPOSAL (SCORED/MANDATORY)

*[**NOTE**: Agency is to describe the scope of the project in this portion of the document in enough detail for proposers to understand what is needed and to submit viable technical proposals.]*

The Technical Proposal must contain a comprehensive description of services including the following elements:

A. Project Approach/Methodology – Include a complete description of the Consultant's proposed approach and methodology for the project. This section should convey Consultant's understanding of the proposed project.

B. Work Plan – Include all project requirements and the proposed tasks, services, activities, etc. necessary to accomplish the scope of the project defined in this RFP. This section of the technical proposal must contain sufficient detail to convey to members of the evaluation team the Consultant's knowledge of the subjects and skills necessary to successfully complete the project. Include any required involvement of AGENCY staff. The Consultant may also present any creative approaches that might be appropriate and may provide any pertinent supporting documentation.

C. Project Schedule – Include a project schedule indicating when the elements of the work will be completed and when deliverables, if any, will be provided.

D. Deliverables – Fully describe deliverables to be submitted under the proposed contract.

E. Outcomes and Performance Measurement – Describe the impacts/outcomes the consultants propose to achieve as a result of the delivery of these services including how these outcomes would be monitored, measured and reported to the state agency.

(Optional)
F. Risks - Ask the consultant to address potential risks associated with this contract. Examples include:

Overall Risk
Define risks you identify as being significant to the success of the project. Include how you would propose to effectively monitor and manage these risks, including reporting of risks to the agency's contract manager.

Specific Risks

- Outline a proposal for minimizing staff turnover and its impact on the agency's contract management staff.
- Provide a business continuation plan that illustrates how you will monitor and manage through times of labor disruption, loss of facility and/or key staff/personnel.

3.3 MANAGEMENT PROPOSAL

A. Project Management (SCORED/MANDATORY)

1. **Project Team Structure/Internal Controls** - Provide a description of the proposed project team structure and internal controls to be used during the course of the project, including any subcontractors. Provide an organizational chart of your firm indicating lines of authority for personnel involved in performance of this potential contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management. Include who within the firm will have prime responsibility and final authority for the work.

2. **Staff Qualifications/Experience** – Identify staff, including subcontractors, who will be assigned to the potential contract, indicating the responsibilities and qualifications of such personnel, and include the amount of time each will be assigned to the project. Provide résumés for the named staff, which include information on the individual's particular skills related to this project, education, experience, significant accomplishments and any other pertinent information. The Consultant must commit that staff identified in its proposal will actually perform the assigned work. Any staff substitution must have the prior approval of the AGENCY.

B. Experience of the Consultant (SCORED/MANDATORY)

1. Indicate the experience the Consultant and any subcontractors have in the following areas: [NOTE: list areas]

2. Indicate other relevant experience that indicates the qualifications of the Consultant, and any subcontractors, for the performance of the potential contract.

3. Include a list of contracts the Consultant has had during the last five years that relate to the Consultant's ability to perform the services needed under this RFP. List contract reference numbers, contract period of performance, contact persons, telephone numbers, and fax numbers/e-mail addresses.

C. References (SCORED/MANDATORY)

List names, addresses, telephone numbers, and fax numbers/e-mail addresses of three business references for whom work has been accomplished and briefly describe the type of service provided. The Consultant and staff proposed to provide the services must grant permission to the AGENCY to contact references, and others for whom services have been provided. Do not include current AGENCY staff as references. References will be contacted and scored for the top-ranking proposal(s) only.

D. Related Information (MANDATORY)

1. If the Consultant or any subcontractor contracted with the state of Washington during the past 24 months, indicate the name of the agency, the contract number and project description and/or other information available to identify the contract.
2. If the Consultant's staff or subcontractor's staff was an employee of the state of Washington during the past 24 months, or is currently a Washington State employee, identify the individual by name, the agency previously or currently employed by, job title or position held and separation date.
3. If the Consultant has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Consultant's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and such litigation determined that the Proposer was in default.
4. Submit full details of the terms for default including the other party's name, address, and phone number. Present the Consultant's position on the matter. The AGENCY will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience. If no such termination for default has been experienced by the Consultant in the past five years, so indicate.

E. OMWBE Certification (Optional)

Include proof of certification issued by the Washington State Office of Minority and Women-Owned Business if certified minority-owned firm and/or women-owned firm(s) will be participating on this project.

3.4 COST PROPOSAL

The maximum fee for this contract must be $_____ or less to be considered responsive to this RFP. Non-responsive proposals will not be evaluated.

The evaluation process is designed to award this procurement not necessarily to the Consultant of least cost, but rather to the Consultant whose proposal best meets the requirements of this RFP. However, Consultants are encouraged to submit proposals that are consistent with State government efforts to conserve state resources.

A. Identification of Costs (SCORED)

Identify all costs including expenses to be charged for performing the services necessary to accomplish the objectives of the contract. The Consultant is to submit a fully detailed budget

including staff costs, administrative costs, travel costs, and any other expenses necessary to accomplish the tasks and to produce the deliverables under the contract. Consultants are required to collect and pay Washington State sales tax, if applicable.

Costs for subcontractors are to be broken out separately. Please note if any subcontractors are certified by the Office of Minority and Women's Business Enterprises.

Optional: The Contractor may be expected to testify before the Washington State Legislature (_____ session, January - April) at the conclusion of the project. Fees and expenses for one trip to Olympia for testimony should be included in the cost proposal.

*[**NOTES**: 1) Include reference to expenses and legislative testimony only if appropriate. 2) When multiple cost components are required, agencies may want to include a cost proposal form for completion by proposers, to assist in presentation of costs in a consistent format.)*

B. Computation

The score for the cost proposal will be computed by dividing the lowest cost bid received by the Consultant's total cost. Then the resultant number will be multiplied by the maximum possible points for the cost section.

*[**NOTE**: The cost proposal can be evaluated in other ways. For complex projects, points can be awarded based both upon the total cost of the project and upon the reasonable allocation of costs for the project.]*

4. EVALUATION AND CONTRACT AWARD

ALL MANDATORY REQUIREMENTS MUST BE MET IN ORDER TO BE EVALUATED.

4.1 EVALUATION PROCEDURE

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of proposals shall be accomplished by an evaluation team, to be designated by the AGENCY, which will determine the ranking of the proposals.

AGENCY, at its sole discretion, may elect to select the top-scoring firms as finalists for an oral presentation.

4.2 CLARIFICATION OF PROPOSAL

The RFP Coordinator may contact the Consultant for clarification of any portion of the Consultant's proposal.

4.3 EVALUATION WEIGHTING AND SCORING

The following weighting and points will be assigned to the proposal for evaluation purposes:

Technical Proposal – 35%		70 points
Project Approach/Methodology	15 points (maximum)	
Quality of Work Plan	35 points (maximum)	
Project Schedule	10 points (maximum)	
Project Deliverables	10 points (maximum)	
Management Proposal – 30%		60 points

Project Team Structure/ Internal Controls	15 points (maximum)	
Staff Qualifications/Experience	15 points (maximum)	
Experience of the Consultant	30 points (maximum)	
Cost Proposal – 35%		70 points
Sub-Total		**200 points**
References [top-scoring proposer(s) only]		10 points
GRAND TOTAL FOR WRITTEN PROPOSAL		**210 points**

References will be contacted for the top-scoring proposer(s) only and will then be scored and added to the total score.

*[**NOTES**: 1) References can be scored as part of the management proposal, if desired. 2) The scores of the written proposals and oral presentations, if required, may be added together to determine the apparent successful contractor or the score from the oral presentation can be considered independently to result in the selection of the apparent successful contractor.]*

4.4 ORAL PRESENTATIONS MAY BE REQUIRED

Written submittals and oral presentations, if considered necessary, will be utilized in selecting the winning proposal. The AGENCY, at its sole discretion, may elect to select the top scoring finalists from the written evaluation for an oral presentation and final determination of contract award. Should the AGENCY elect to hold oral presentations, it will contact the top-scoring firm(s) to schedule a date, time and location. Commitments made by the Consultant at the oral interview, if any, will be considered binding.

The score from the oral presentation will determine the apparently successful proposer.
OPTION: The scores from the written evaluation and the oral presentation may be combined to determine the apparently successful contractor.

4.5 NOTIFICATION TO PROPOSERS

Firms whose proposals have not been selected for further negotiation or award will be notified via FAX or by e-mail.

4.6 DEBRIEFING OF UNSUCCESSFUL PROPOSERS

Upon request, a debriefing conference will be scheduled with an unsuccessful Proposer. The request for a debriefing conference must be received by the RFP Coordinator within three (3) business days after the Notification of Unsuccessful Consultant letter is faxed/e-mailed to the Consultant. The debriefing must be held within three (3) business days of the request.

Discussion will be limited to a critique of the requesting Consultant's proposal. Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

4.7 PROTEST PROCEDURE

This procedure is available to Consultants who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Consultant is allowed three (3) business days to file a protest of the acquisition with the RFP Coordinator. Protests may be submitted by facsimile, but should be followed by the original document.

Consultants protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Consultants under this procurement.

All protests must be in writing and signed by the protesting party or an authorized Agent. The protest must state the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included. All protests shall be addressed to the RFP Coordinator.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

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

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) an evaluator's professional judgment on the quality of a proposal, or 2) AGENCY'S assessment of its own and/or other agencies needs or requirements.

Upon receipt of a protest, a protest review will be held by the AGENCY. The AGENCY director or an employee delegated by the Director who was not involved in the procurement will consider the record and all available facts and issue a decision within five business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

> In the event a protest may affect the interest of another Consultant that submitted a proposal, such Consultant will be given an opportunity to submit its views and any relevant information on the protest to the RFP Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold the AGENCY's action; or
- Find only technical or harmless errors in the AGENCY's acquisition process and determine the AGENCY to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide the AGENCY options which may include:
  –Correct the errors and re-evaluate all proposals, and/or
  –Reissue the solicitation document and begin a new process, or
  –Make other findings and determine other courses of action as appropriate.

If the AGENCY determines that the protest is without merit, the AGENCY will enter into a contract with the apparently successful contractor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

5. RFP EXHIBITS

Exhibit A Certifications and Assurances
Exhibit B Personal Service Contract Format including General Terms and Conditions (GT&Cs)

*[**NOTE**: Exhibit B is not included with this sample RFP, since a sample Personal Service Contract format and the General Terms and Conditions (GT&C) are set forth as Appendix E in this Guide.]*

EXHIBIT A to Sample RFP

CERTIFICATIONS AND ASSURANCES

I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):

1. I/we declare that all answers and statements made in the proposal are true and correct.

2. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.

3. The attached proposal is a firm offer for a period of 60 days following receipt, and it may be accepted by the AGENCY without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.

4. In preparing this proposal, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)

5. I/we understand that the AGENCY will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the AGENCY, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.

6. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Proposer or to any competitor.

7. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.

8. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

9. I/we grant the AGENCY the right to contact references and others, who may have pertinent information regarding the Proposer's prior experience and ability to perform the services contemplated in this procurement.

Note: If submitted electronically, include the following:
On behalf of the firm submitting this proposal, my name below attests to the accuracy of the above statements.

_____
Signature of Proposer

_____
Title Date

Appendix D

Sample Summary Evaluation Scoring Sheet for Written Proposals

SAMPLE SUMMARY EVALUATION SCORING SHEET FOR WRITTEN PROPOSALS

RFP NO. _____

EVALUATION FACTORS	Maximum Points Possible	Bidder #1	Bidder #2	Bidder #3	Bidder #4
1. TECHNICAL PROPOSAL (35%) [RFP Section 3.2, A – D]					
a) Proposed project approach & methodology	15	_____			
b) Quality of work plan	35	_____			
c) Feasibility of proposed schedule	10	_____			
d) Description of proposed deliverables	10	_____			
SUBTOTAL FOR THIS SECTION	70				
2. MANAGEMENT PROPOSAL (30%) [RFP Section 3.3, A & B]					
a) Project Team Structure/Internal Controls	15	_____			
b) Staff qualifications & experience	15	_____			
c) Consultant's relevant experience	30	_____			
SUBTOTAL FOR THIS SECTION	60				
3. **COST PROPOSAL (35%)** [RFP Section 3.4]					
Bidders receive points based upon a percentage derived by dividing their bid into the lowest bid and then multiplying the percentage derived by 70 (maximum points for this section).		_____			
SUBTOTAL FOR THIS SECTION	70				
TOTAL SCORE	200				
4. **REFERENCES** [RFP Section 3.3, C]					
Checked for top scoring proposer(s) only.	10	_____			
FINAL SCORE – Written Proposal	210				

Appendix E

Sample Personal Service Contract

S A M P L E

CONTRACT NO._____

CONTRACT FOR PERSONAL SERVICES
BETWEEN
STATE OF WASHINGTON

_____

AND

_____

This Contract is made and entered into by and between the state of Washington, _____, hereinafter referred to as the "**AGENCY**", and the below named firm, hereinafter referred to as "**CONTRACTOR**,"

Contractor Name _____
Address _____
City, State & Zip Code _____
Phone _____
E-mail Address _____

Washington State UBI No. _____
Federal ID No. _____

PURPOSE

The purpose of this contract is to

SCOPE OF WORK

A. The CONTRACTOR will provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

Option 1: *Identify all tasks, work elements and objectives of the contract, and timetables by which major parts of the work are to be completed. The scope of work may be included within the text of the contract or attached as a separate exhibit as shown in Option 2 below.*

Option 2: As included in the CONTRACTOR'S Proposal dated _____ attached as Exhibit B, and the AGENCY'S Request for Proposals attached as Exhibit C.

B. Exhibit A contains the General Terms and Conditions governing work to be performed under this contract, the nature of the working relationship between the AGENCY and the CONTRACTOR, and specific obligations of both parties.

C. The CONTRACTOR shall produce the following written reports or other written documents (deliverables) by the dates indicated below:

All written reports required under this contract must be delivered to _____, the Contract Manager, in accordance with the schedule above.

APPENDIX E

PERIOD OF PERFORMANCE

The period of performance under this contract will be from _____or date of execution, whichever is later, through _____.

NOTE: If the contract is required to be filed with the Office of Financial Management, in accordance with Chapter 39.29 RCW, include the following paragraph.

OFM FILING REQUIREMENT (NOTE: Use as applicable)

10-Day Filing
Under the provisions of Chapter 39.29 RCW, this personal service contract [*or amendment*] is required to be filed with the Office of Financial Management (OFM). No contract required to be so filed is effective and no work shall be commenced nor payment 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.

Effective Date of Filing
For competitive contracts or amendments that are not subject to the 10 working day filing period, the contract start date is the working day that the contract is filed, date of execution, or any day thereafter.

COMPENSATION AND PAYMENT

AGENCY shall pay an amount not to exceed _____ ($_____) for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. CONTRACTOR'S compensation for services rendered shall be based on the following rates or in accordance with the following terms:

NOTE: List detail of compensation to be paid, e.g., hourly rates, number of hours per task, unit prices, cost per task, cost per deliverable, etc. Or reference documents that specify Contractor's compensation and payment, e.g. Contractor's compensation for services rendered shall be based on the schedule set forth in Exhibit B, Fees and Expenses.

NOTE: Expenses are optional. Do not include Expenses paragraph below if expenses are not allowable. If allowable, include only expenses that are appropriate for the contract.

Expenses. CONTRACTOR shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by the AGENCY as reimbursable. The maximum amount to be paid to the CONTRACTOR for authorized expenses shall not exceed $_____, which amount is included in the contract total in Paragraph A, "Amount of Compensation." Such expenses may include: airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. CONTRACTOR shall receive compensation for travel expenses at current State travel reimbursement rates. To receive reimbursement, CONTRACTOR must provide a detailed breakdown of authorized expenses, identifying what was expended and when.

BILLING PROCEDURES

NOTE: Payment can also be based upon satisfactory acceptance of each deliverable, payment after completion of each major part of the contract, payment at conclusion of the contract, etc.

AGENCY will pay CONTRACTOR upon receipt of properly completed invoices, which shall be submitted to the Project Manager not more often than monthly. The invoices shall describe and document to the AGENCY'S satisfaction a description of the work performed, the progress of the project, and fees. If expenses are invoiced, provide a detailed breakdown of each type. Any single expense in the amount of $50.00 or more must be accompanied by a receipt in order to receive reimbursement.

Payment shall be considered timely if made by the AGENCY within thirty (30) days after receipt of properly completed invoices. Payment shall be sent to the address designated by the CONTRACTOR.

The AGENCY may, in its sole discretion, terminate the contract or withhold payments claimed by the CONTRACTOR for services rendered if the CONTRACTOR fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the AGENCY.

NOTE: Optional Provision - The AGENCY shall withhold 10 percent from each payment until acceptance by the AGENCY of the final report (or completion of the project, etc.).

CONTRACT MANAGEMENT

The Contract Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this Contract.

Contract Manager for CONTRACTOR is:	Contract Manager for AGENCY is:
Contractor Name Address City, State Zip Code Phone: ( ) Fax: ( ) E-mail address:	Agency Name Address City, State Zip Code Phone: ( ) Fax: ( ) E-mail address:

INSURANCE

The CONTRACTOR shall provide insurance coverage as set out in this section *[or as set forth in the Request for Proposals No. ____].* The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the CONTRACTOR or subcontractor, or agents of either, while performing under the terms of this contract.

The CONTRACTOR shall provide insurance coverage that shall be maintained in full force and effect during the term of this Contract, as follows:

1. Commercial General Liability Insurance Policy - Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than $1,000,000 per occurrence. Additionally, the CONTRACTOR is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
2. Automobile Liability. In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or unowned by the CONTRACTOR, automobile liability insurance shall be required. The minimum limit for automobile liability is:

   $1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage
3. The insurance required shall be issued by an insurance company/ies authorized to do business within the state of Washington, and shall name the state of Washington, its agents and employees as additional insureds under the insurance policy/ies. All policies shall be primary to any other valid and collectable insurance. CONTRACTOR shall instruct the insurers to give AGENCY 30 days advance notice of any insurance cancellation.

CONTRACTOR shall submit to AGENCY within 15 days of the contract effective date, a certificate of insurance that outlines the coverage and limits defined in the *Insurance* section. CONTRACTOR shall submit renewal certificates as appropriate during the term of the contract.

NOTE*: For further information about insurance, including recommended language for contracts, refer to the OFM Risk Management Division's manual, "Contracts: Transferring and Financing Risk," available at: http://www.ofm.wa.gov/rmd/contrman.htm.*

ASSURANCES

AGENCY and the CONTRACTOR agree that all activity pursuant to this Contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

ORDER OF PRECEDENCE

Each of the Exhibits listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable Federal and state of Washington statutes and regulations
- Special Terms and Conditions as contained in this basic contract instrument
- Exhibit A – General Terms and Conditions
- Exhibit B – _____
- Exhibit C – Request for Proposals No. _____
- Any other provision, term or material incorporated herein by reference or otherwise incorporated

ENTIRE AGREEMENT

This contract including referenced exhibits represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

CONFORMANCE

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

APPROVAL

This contract shall be subject to the written approval of the AGENCY'S authorized representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

THIS CONTRACT, consisting of _____ pages and ____ attachments, is executed by the persons signing below who warrant that they have the authority to execute the contract.

[CONTRACTOR'S NAME]		[AGENCY NAME]	
_____		_____	
Signature		**Signature**	
_____		_____	
Title	**Date**	**Title**	**Date**

APPROVED AS TO FORM

_____

Assistant Attorney General

_____

Date

NOTE:
1. *The signature blocks on the contract must not appear on a page by themselves. Some of the text of the contract should be included at the top of the page.*
2. *Approval as to form is not required on every contract, once the contract format has been approved by the Attorney General's Office.*

EXHIBIT A

GENERAL TERMS AND CONDITIONS

(**NOTE TO USERS:** This version of the General Terms and Conditions is current as of the date of issuance of this booklet, and it will be updated in the future as changes are necessary. If the Health Information Portability and Accountability Act (HIPAA) applies to your contract, please refer to the AGO approved Business Associate addendum. That information is not included in this contract.)

DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

A. "Agency" shall mean the _____, of the state of Washington, any division, section, office, unit or other entity of the Agency, or any of the officers or other officials lawfully representing that Agency.

B. "Agent" shall mean the Director, _____, and/or the delegate authorized in writing to act on the Director's behalf.

C. "Contractor" shall mean that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the Contractor.

D. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this contract under a separate contract with the Contractor. The terms "Subcontractor" and "Subcontractors" mean Subcontractor(s) in any tier.

ACCESS TO DATA

In compliance with RCW 39.29.080, the Contractor shall provide access to data generated under this contract to AGENCY, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the Agency.

AMENDMENTS

This contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

ASSIGNMENT

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of the Agency.

ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney's fees and costs.

CONFIDENTIALITY / SAFEGUARDING OF INFORMATION

The Contractor shall not use or disclose any information concerning the Agency, or information which may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the Agency, or as may be required by law.

CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the Agency may, in its sole discretion, by written notice to the Contractor terminate this contract if it is found after due notice and examination by the Agent that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of, or performance under this contract.

In the event this contract is terminated as provided above, the Agency shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of the Agency provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Agent makes any determination under this clause shall be an issue and may be reviewed as provided in the “Disputes” clause of this contract.

COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Agency. The Agency shall be considered the author of such Materials. In the event the Materials are not considered “works for hire” under the U.S. Copyright laws, Contractor hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to the Agency effective from the moment of creation of such Materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract, Contractor hereby grants to the Agency a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Agency.

The Contractor shall exert all reasonable effort to advise the Agency, at the time of delivery of Materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this contract. The Agency shall receive prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this contract. The Agency shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. The Agency shall have the right, in the event of breach of this clause by the Contractor, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

DISPUTES

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with Agent.

1. The request for a dispute hearing must:

- be in writing;
- state the disputed issue(s);
- state the relative positions of the parties;
- state the Contractor's name, address, and contract number; and
- be mailed to the Agent and the other party's (respondent's) Contract Manager within 3 working days after the parties agree that they cannot resolve the dispute.

2. The respondent shall send a written answer to the requester's statement to both the agent and the requester within 5 working days.
3. The Agent shall review the written statements and reply in writing to both parties within 10 working days. The Agent may extend this period if necessary by notifying the parties.
4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable ADR method in addition to the dispute resolution procedure outlined above.

DUPLICATE PAYMENT

The Agency shall not pay the Contractor, if the Contractor has charged or will charge the state of Washington or any other party under any other contract or agreement, for the same services or expenses.

GOVERNING LAW

This contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the Contract. "Claim," as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractors' agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the Contract. Contractor's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this contract. The Contractor and his or her employees or agents performing under this contract are not employees or agents of the Agency. The Contractor will not hold himself/herself out as or claim to be an officer or employee of the Agency or of the state of Washington by reason hereof, nor will the Contractor make

any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, Agency may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The Agency may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Agency under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

LIMITATION OF AUTHORITY

Only the Agent or Agent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the Agent.

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Agency. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

NONDISCRIMINATION

During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

PRIVACY

Personal information including, but not limited to, "Protected Health Information," collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification or loss. Contractor shall ensure its directors, officers, employees, subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as otherwise required by law.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The Contractor agrees to indemnify and hold harmless the Agency for any damages related to the Contractor's unauthorized use of personal information.

PUBLICITY

The Contractor agrees to submit to the Agency all advertising and publicity matters relating to this Contract wherein the Agency's name is mentioned or language used from which the connection of the Agency's name may, in the Agency's judgment, be inferred or implied. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of the Agency.

RECORDS MAINTENANCE

The Contractor shall maintain books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature

expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review or audit by the Agency, personnel duly authorized by the Agency, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

REGISTRATION WITH DEPARTMENT OF REVENUE

The Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

RIGHT OF INSPECTION

The Contractor shall provide right of access to its facilities to the Agency, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the Agency may terminate the contract under the "Termination for Convenience" clause, without the 10 day notice requirement, subject to renegotiation at the Agency's discretion under those new funding limitations and conditions.

SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

SITE SECURITY

While on Agency premises, Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

SUBCONTRACTING

Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the Agency. In no event shall the existence of the subcontract operate to release or reduce the liability of the contractor to the Department for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the contractor and personnel assigned to work under this contract.

Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law.

TAXES

All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

TERMINATION FOR CAUSE

In the event the Agency determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, the Agency has the right to suspend or terminate this Contract. Before suspending or terminating the Contract, the Agency shall notify the Contractor in writing of the need to

take corrective action. If corrective action is not taken within 30 days, the Contract may be terminated or suspended. In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising and staff time. The Agency reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the Agency to terminate the Contract. A termination shall be deemed to be a “Termination for Convenience” if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of the Agency provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

TERMINATION FOR CONVENIENCE

Except as otherwise provided in this contract, the Agency may, by 10 days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, the Agency shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

TERMINATION PROCEDURES

Upon termination of this contract, the Agency, in addition to any other rights provided in this contract, may require the Contractor to deliver to the Agency any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Agency shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Agency, and the amount agreed upon by the Contractor and the Agency for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services which are accepted by the Agency, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Agent shall determine the extent of the liability of the Agency. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The Agency may withhold from any amounts due the Contractor such sum as the Agent determines to be necessary to protect the Agency against potential loss or liability.

The rights and remedies of the Agency provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Agent, the Contractor shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Assign to the Agency, in the manner, at the times, and to the extent directed by the Agent, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Agency has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agent to the extent Agent may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the Agency and deliver in the manner, at the times, and to the extent directed by the Agent any property which, if the contract had been completed, would have been required to be furnished to the Agency;
6. Complete performance of such part of the work as shall not have been terminated by the Agent; and

7. Take such action as may be necessary, or as the Agent may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which the Agency has or may acquire an interest.

TREATMENT OF ASSETS

A. Title to all property furnished by the Agency shall remain in the Agency. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Agency upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Agency upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Agency in whole or in part, whichever first occurs.

B. Any property of the Agency furnished to the Contractor shall, unless otherwise provided herein or approved by the Agency, be used only for the performance of this contract.

C. The Contractor shall be responsible for any loss or damage to property of the Agency which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.

D. If any Agency property is lost, destroyed or damaged, the Contractor shall immediately notify the Agency and shall take all reasonable steps to protect the property from further damage.

E. The Contractor shall surrender to the Agency all property of the Agency prior to settlement upon completion, termination or cancellation of this contract.

F. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by authorized representative of the Agency.

Appendix F

Examples of Contract Documentation Forms

Contract Documentation Checklist

Contract Number: _____

Contractor Name: _____

Contract Manager: _____

What services are being contracted?

Do state agency personnel typically perform them?

What type of contract is this?

- ❑ Client Service
- ❑ Personal Service

Document the following pre-contract decisions:

- ❑ Funding Availability
- ❑ Type of Appropriation
- ❑ Cost/Benefit Analysis
- ❑ Available Public Resources
- ❑ Legal Constraints to Contracting
- ❑ Contracting with Current or Former State Employees
- ❑ Independent Contractor Relationship
- ❑ Fiscal Considerations (appropriate method of compensation and billing)
- ❑ Federally Funded Contracts (subrecipient or vendor)
- ❑ Audits (evaluate coverage provided by existing and anticipated audits)

Contractor Selection and Screening

- ❑ Competitive procurement process was used?
- ❑ Were procedures sufficient to obtain an adequate number of responses?
- ❑ How broadly was the solicitation for proposals advertised?
- ❑ Were OMWBE firms afforded the maximum practical opportunity in the specific procurement?

Were appropriate contractor screening criteria and methods used? Consider the following contractor standards:

- ❑ Appropriate experience, staffing, technical qualifications, and facilities.
- ❑ Able to comply with the proposed or required time of delivery or performance schedule.
- ❑ Adequate administrative and financial capability for performance.
- ❑ Satisfactory record of integrity, judgment, and performance.
- ❑ Otherwise qualified and eligible to receive a contract under applicable laws and regulations.
- ❑ Provided evidence of the appropriate licenses, registrations and certifications that would apply to the specific contracted services.

- ❑ Non-competitive process was used?
  Explain reasons for selecting contractor(s).

- ❑ Sole source selection method was used?
  Explain reasons for selecting contractor(s).

Risk Assessment and Monitoring Plan

- ❑ Were program and contractor risks assessed prior to entering into a contract?
- ❑ Does the risk assessment form the basis of the monitoring plan?
- ❑ Was the risk assessment used to determine the scope, frequency, and methods of monitoring and/or auditing to be used to ensure sufficient oversight?

Contract Provisions

Specifically review the contract for the following items:

- ❑ Is the scope of work clearly written and defined?
- ❑ Are amendments made in writing and executed prior to the expiration of the original contract?
- ❑ Are performance measures required and do they satisfy statutorily mandated outcomes?
- ❑ Are hold harmless and indemnification provisions included?
- ❑ Are liability and industrial insurance provisions adequate?
- ❑ Are remedies and sanctions provisions appropriate to safeguard the state's interests?
- ❑ Do contract termination provisions protect the state's rights?
- ❑ Was an appropriate compensation method selected and identified in the contract?
- ❑ Is coordination with other agencies an issue?

Technical Assistance

- ❑ Will this contractor need technical assistance? What are the indicators?
- ❑ How will technical assistance be provided to the contractor?

Monitoring

- ❑ Is there a monitoring plan in place? What monitoring activities are listed in your plan?
- ❑ If corrective action is needed, is there a corrective action form your agency uses?
- ❑ If criminal activity is suspected, was it reported?

Post-Contract Follow up

- ❑ Any activities need follow up?
- ❑ All invoices have been received and paid?
- ❑ Follow up on audit findings needed?
- ❑ Program objectives and outcomes have been evaluated/assessed?

Audits

- ❑ Have audits been completed on this provider?
- ❑ What audit coverage is necessary to assure appropriate spending of state funds?
- ❑ Was a risk assessment completed to determine whether an audit is needed?
- ❑ Is corrective action necessary? Were questioned costs and audit findings resolved?

Contract Documentation Form

Contracting Activity	Comments
Contract Number: **Contractor Name:** **Contract Manager:**	
Pre-Contract Considerations	
Document the types of services being contracted. Are these services performed by state agency personnel?	
What type of contract is this? (Client Service, Personal Service)	
Document the following pre-contract decisions.	
✓ Funding Availability	
✓ Type of Appropriation	
✓ Cost/Benefit Analysis	
✓ Available Public Resources	
✓ Legal Constraints to Contracting	
✓ Contracting with Current or Former State Employees	
✓ Independent Contractor Relationship	
✓ Fiscal Considerations (appropriate method of compensation and billing)	
✓ Federally Funded Contracts (subrecipient or vendor)	
✓ Audits (evaluate coverage provided by existing and anticipated audits)	
Contractor Selection and Screening	
Document the decision to use a competitive procurement process or whether a non-competitive, sole source selection method was used.	
For competitive process, were procedures sufficient to obtain an adequate number of responses? How broadly was the solicitation for proposals advertised?	
Were OMWBE firms afforded the maximum practical opportunity in the specific procurement?	
Were appropriate contractor-screening criteria and methods used? Consider the following contractor standards:	
✓ Appropriate experience, staffing, technical qualifications, and facilities.	
✓ Able to comply with the proposed or required time of delivery or performance schedule.	
✓ Adequate administrative and financial capability for performance.	
✓ Satisfactory record of integrity, judgment, and performance.	
✓ Otherwise qualified and eligible to receive a contract under applicable laws and regulations.	
✓ Provided evidence of the appropriate licenses, registrations and certifications that would apply to the specific contracted services.	
Risk Assessment and Monitoring Plan	
Were the program and contractor risks assessed prior to entering into a contract? The assessment should form the basis of the monitoring plan.	

APPENDIX F

Risk Assessment and Monitoring Plan	Comments
Was the risk assessment used as the basis to determine the scope, frequency, and methods of monitoring and/or auditing to be used to ensure sufficient oversight?	
Contract Provisions	
Specifically review the contract for the following items:	
✓ Is the scope of work clearly written and defined?	
✓ Are amendments made in writing and executed prior to the expiration of the original contract?	
✓ Are performance measures required and do they satisfy statutorily mandated outcomes?	
✓ Are hold harmless and indemnification provisions included?	
✓ Are liability and industrial insurance provisions adequate?	
✓ Are remedies and sanctions provisions appropriate to safeguard the state's interests?	
✓ Do contract termination provisions protect the state's rights?	
✓ Was an appropriate compensation method selected and identified in the contract?	
✓ Does the contract specify that payment will not be made for the same or similar services for the same client more than once (no duplicate payments)?	
Technical Assistance	
Will this contractor need technical assistance? What are the indicators?	
How will technical assistance be provided to the contractor?	
Monitoring	
Is there a monitoring plan in place? What monitoring activities are listed in your plan?	
If corrective action is needed, is there a corrective action form your agency uses?	
If criminal activity is suspected, was it reported?	
Post Contract Follow-up Procedures	
Any activities need follow up?	
All invoices have been received and paid?	
Follow up on audit findings needed?	
Program objectives and outcomes have been evaluated/assessed?	
Audits	
Have audits been completed on this provider?	
What audit coverage is necessary to assure appropriate spending of state funds?	
Was a risk assessment completed to determine whether an audit is needed?	
Is corrective action necessary? Were questions costs resolved?	
Are audit findings resolved?	

This form must be completed for all Personal Services contracts. A copy of this form should accompany the original contract through the contract approval process and should be filed with the executed contract. The contract designee should maintain the original in their contract file for risk assessment updates and revisions as necessary, as well as monitoring and post contract evaluation. The final Planning and Risk Assessment must be sent to Contracts Administrator after contract is complete.

CONTRACTOR NAME	
CONTRACT DESIGNEE	
Has contract designee completed contract training?	☐ **Yes** ☐ **No**
CONTRACT NUMBER **(Contracts Administrator will provide)**	

A. PRE-CONTRACT PLANNING

1. Document the type of services being contracted:

2. Document the following pre-contract decisions:

Decision	Comments
Funding availability (include MIC)?	
Type of appropriation (state, federal, private)?	
Have you performed a cost/benefit analysis?	
Available public resources?	
• Agency resources	
• Other public resources	
Any legal constraints to contracting?	
Is contractor a current or former state employee?	
• If current, does contractor require Ethics Board approval?	
• If former, provide last date of employment.	
Does an independent contractor relationship exist?	
Have you determined the appropriate method(s) of compensation and billing? Explain. ☐ Cost Reimbursement (Budget) ☐ Time and materials (Hourly) ☐ Fixed Price ☐ Performance Based (valuation of deliverables)	
Federally funded Contracts - subrecipient or vendor?	
Are audits required? ☐ Yes ☐ No If yes, evaluate coverage provided by existing and anticipated audits.	

B. CONTRACTOR SELECTION AND SCREENING

1. What was the process used to select this contractor?

☐ Competitive ☐ Sole Source

2. If competitive, describe the process used.

☐ Formal (>$20,000) ☐ Informal (<$20,000)

Please document where competitive documentation (proposals, proof of advertisement, etc.) will be maintained.

3. If sole source, describe why competition was not appropriate. Explain reasons for selecting contractor.

4. Advertised? ☐ Yes ☐ No ☐ N/A (less than $20,000)

If yes, where and when was the advertisement placed?

Do you have proof of advertisement (tear sheet and affidavit)? ☐ Yes ☐ No

5. Does the contractor require accreditation and licensure? ☐ Yes ☐ No

If yes, have you received proof from contractor? ☐ Yes ☐ No

C. RISK ASSESSMENT - Please respond to the following questions with regards to the risks associated with this contract. *Risk inherent in a contractor's potential performance is dynamic and should be updated periodically throughout the term of the contract*. Not required on contracts less than $5,000.

Score on a scale of 1 - 5, with 1 representing the lowest risk.
If factor is not applicable, risk point = O. Unknown, risk point = 5.
1-2 = Low Risk 3= Medium Risk 4-5 = High Risk

1. Contract Risk

Risk Factor	**Risk Points**
Contract monitoring is required by law or regulation (such as Single Audit Act)	
Contract dollar amount $5,000 to <$25,000 = Low Risk >$25,000 to <$100,000 = Medium Risk >$100,000 = High Risk	
Complexity of services	
Payment method (how complex is it?) What method(s) did you use? What experience do you have with the method(s)? ☐ Cost Reimbursement (Budget) (score 3-5) ☐ Time and materials (Hourly) (score 3-5) ☐ Fixed Price (score 1-3)) ☐ Performance Based (valuation of deliverables) (score 1-3)	
Procurement method: ☐ Competitive (score 1 to 3) ☐ Sole Source (score 3 to 5)	

2. Contractor Risk

Risk Factor	Risk Points
Size and source of funding	
Number of contracts with State (including OSPI)	
Length of time in business	
Experience and past performance	
Accreditation and licensure (Is contractor subject to either and if so, do you have proof?)	
Financial health and practices (is contractor's financial condition good or poor?)	
Board of Directors (for Non-profits only - do they take an active role in the organization?)	
Subcontracting activities (does the contractor have an effective monitoring function to oversee subcontractors?)	
Organizational changes (is organization stable or does it have frequent turnover?)	
Management structure and adequacy (Is organization centralized or decentralized - how much control over decentralized functions?)	
Legal actions (has there been any for the last 12 months? - if so, what?)	
Background of individuals (do you have resumes?)	

D. CONTRACT MONITORING - Monitoring means any planned, ongoing, or periodic activity that measures and ensures contractor compliance with the terms, conditions, and requirements of a contract. The level of monitoring should be based on a risk assessment of the contractor's role in delivering services and the contractor's ability to deliver under the terms of the contract.

1. Were contract and contractor risks assessed prior to entering into a contract?

   ☐ Yes ☐ No

2. Does the risk assessment form the basis of the monitoring plan?

   ☐ Yes ☐ No

3. Was the risk assessment used to determine the scope, frequency, and methods of monitoring and/or auditing to be used to ensure sufficient oversight?

   ☐ Yes ☐ No

4. What monitoring activities are in your plan?

Monitoring Activities	Comments
Review of entity periodic reports	
Review of entity invoices and other documentation	
Conduct onsite reviews or other observations (meetings, etc.)	
Maintain other periodic contract with contractor (telephone, email, etc.)	

E. TECHNICAL ASSISTANCE

1. Will this contractor need technical assistance?

   ☐ Yes ☐ No

   If yes, what are the indicators?

2. How will technical assistance be provided to this contractor?

F. AUDITS

ISSUE	COMMENTS
Have audits been completed on this contract (for example, A133 audits)?	
What, if any, audit coverage is necessary to assure appropriate spending of state funds?	
Was a risk assessment completed to determine whether an audit was needed?	
Is corrective action necessary? Were questioned costs resolved?	
Are audit findings, if any, resolved?	

G. POST CONTRACT FOLLOW-UP PROCEDURES

ISSUE	COMMENT
Any activities need follow-up?	
All invoices have been received and paid?	
Follow-up on audit findings needed?	
Program objectives and outcomes have been evaluated/assessed? Please describe.	

Provide evaluation of contractor performance:

Final must be submitted to Contracts Administrator.

A

Advertising, Competitive..... 3-2, 5-8
Advertising, Sole source.....4-12
Annual Contract Procedures Report 4-32
Architectural/Engineering Report.....4-33
Auditing 1-18, 8-18

B

Blind Evaluation 6-11
Business License, Contractor's.....3-7

C

Civil Penalty 4-40
Client Services 4-36
Communication Services 4-20
Competitive Contracts 1-1, 4-19, 5-1
Collaborating 4-34, 8-1
Compensation Method..... 7-5, 7-15
Conflict of Interest Statement.....6-4
Contract, Sample..... E-1
Contract Management.....8-1
Contract Monitoring 8-3
Contract Negotiations 7-1
Cost/Benefit Analysis 2-6
Cost Reimbursement..... 7-16, 8-7

D

Debriefing Conferences 6-14
Documentation.....5-5, 6-13, F-1

E

Emergency Contracts.....4-26
Employee Training Services.....4-20
Ethics 1-14
Evaluating Proposals 6-10
Evaluation Team.....6-3
Evidence of Competition 5-3
Exemptions 4-33
Expert Witness Contracts 4-38

F

Fiscal Responsibility.....7-14
Fixed Price 7-17
Frequently Asked Questions.....1-18
Filing Charts 4-40
Filing Contracts 4-1
Formal Competition.....5-8

G

Goods and Purchased Services 1-4
General Terms and Conditions 7-2

H

Highway Design and Construction 1-12

I

Independent Contractor vs. Employee.....2-11
Information Services Board (ISB) 1-8
Insurance and Bonds.....1-13
Interagency/Intergovernmental
Agreements 4-34, B-1
IT Personal Services 1-10, 1-11
IT Purchased Services.....1-8

J

Justification, Filing 4-16, 4-25, 4-27

L

Late Filings 4-9
Legal Notice, Competitive Award .....
.....3-2, 3-6, 4-12
Legal Notice, Sole Source 4-12, 4-14
Legal Constraints to Contracting 2-8

M

Management Consulting.....4-19
Marketing Services 4-20
Master Personal Service Contracts 2-14
Merit System Alternatives to Contracting ...2-9
Method of Compensation 7-5, 7-15
Minority and Women Owned Firms.....2-18

N

Negotiated Procurement 1-3
Newspapers.....3-2

O

Office of Minority and Women's Business
Enterprise.....2-10
Oral Presentations.....6-13
Organizational Services 4-19

P

Performance Based 7-17
Performance Measures/Outcomes 2-12
Personal Service Contract Database 4-2
Personal Services, Examples 1-6
Printing Services.....1-13
Pre-proposal Conference 6-5
Procurement Authority 1-1
Protest of a Procurement.....6-15
Public Works 1-11
Purchased Services, (non-IT).....1-4
Purchased Services, (IT).....1-8

R

Request for Proposals 5-8, C-1
Responsiveness of Proposals 6-7
Risk Assessment 2-2
Risk-Based Audits 1-18
Risk Factors 2-2

S

Scope of Work 7-3
Sole Source Advertisement.....4-12
Sole Source Contracts.....4-10
State Funds 4-7
Standards of Ethics and Conduct.....1-14

T

Time and Materials Contract 7-17
Training 1-17

W

Washington Purchasing Manual, GA 1-4