



## 15.20 Personal Service Contracts — Competitive Procurement Requirements

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### 15.20.10

July 1, 2007

#### Purpose of this policy

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

### 15.20.15

July 26, 2009

#### Competitive procurement requirements

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

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

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

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

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**15.20.20**

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**Evidence of competition – informal competition**

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

## 15.20.20.a

**Written Solicitation.** The agency is to prepare and issue an informal, written solicitation document. The document may be in the form of a letter, an electronic memorandum or other format that clearly sets forth the required information in writing. It can be sent electronically, by facsimile, or by mail. Agencies are required to post the solicitation on the on-line contractor registration and bid system called Washington Electronic Business Solution (WEBS) operated by the Department of General Administration (GA).

WEBS may be accessed at: <http://www.ga.wa.gov/webs/>. For assistance using WEBS, contact GA at (360) 902-7400.

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

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

## 15.20.20.b

**Multiple Firms.** The agency is to solicit responses from "multiple firms" in selecting a contractor. "Multiple" firms mean a reasonable number of parties considering such factors as type of services needed, cost, schedule, and availability. For informal competition, the offer is to be issued to a **minimum of three** firms. If fewer than three firms are contacted, an explanation is to be included in the contract file as to why more firms were not invited to participate.

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- 15.20.20.c **Evaluation and Negotiation.** The agency is to document the time and date when responses were received at the location specified in the solicitation to validate that they were within the due date and time. Evaluate written responses based on how well each proposal meets the requirements described in the informal solicitation document. One or more individuals should evaluate the written responses. Document in writing the basis for the award decision. Notify the successful and unsuccessful proposers of the results in writing. Conduct contract negotiations with the apparent successful contractor. When agreement is reached between the parties, execute a personal service contract and work may begin.
- 15.20.20.d **Documentation.** The agency must thoroughly document the process used to select the contractor and retain the appropriate auditable documents in the files, including at a minimum the following:
- Names of the firms contacted and/or solicited.
  - Copy of the solicitation document issued.
  - The WEBS System Identifier Number through which the bid detail can be displayed in WEBS.
  - Copies of the responses received.
  - Written documentation of the evaluation and selection process including the reason(s) for selection of the successful contractor.
  - Copies of the written notification sent to the successful and unsuccessful firms.
  - Copy of the executed contract.
- 15.20.20.e Report the contract to OFM in the Personal Service Contract Database, in accordance with the requirements of Subsection 15.30.55.

**15.20.30**

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**Formal competitive solicitation**

15.20.30.a

**Formal Competitive Solicitation.** Formal competitive solicitation for personal services of \$20,000 or more is required, as described in the following subsections.

15.20.30.b

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

For assistance using WEBS, contact GA at (360) 902-7400. Agencies should encourage firms with which they conduct business to register in WEBS.

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

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

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

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

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

3. **WEBS Commodity Code Not Available.** If WEBS does not have the category of personal service needed for a solicitation, the agency should notify GA to add the category. If the new category cannot be added to WEBS in a timely manner and the solicitation schedule will be jeopardized, the agency must:
  - a. Publish a legal notice of the solicitation in a newspaper that it determines to be the most advantageous for notification purposes;
  - b. Notify six or more firms outside of WEBS and document why this approach is being used; and
  - c. Release the solicitation document and proceed with the competitive process as outlined in this policy. Firms contacted outside of WEBS should be encouraged to register in WEBS as soon as the category is established by GA. This situation should happen on an exception basis.
  
4. **Advertising.** When agencies post a solicitation in WEBS, they are **not required** to also advertise the solicitation by publishing a legal notice in a newspaper, unless one of the below exceptions is met. Agencies have the option, to use other effective methods to notify firms of their solicitations in addition to the use of WEBS.

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

- a. WEBS cannot be used by an agency because the system does not have the category of service needed and/or the category cannot be added in a timely fashion. Or, the category is included but no firms have registered. The agency must then advertise by publishing a legal notice of its solicitation in a newspaper in Washington State that it determines to be the most advantageous for its purposes.
- b. For executive cabinet agencies only, a contract is estimated to be in the amount of \$528,000 or more and is determined to meet the requirements set forth in international trade agreements. Refer to Subsection 15.20.35 for further information.

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

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

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

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

15.20.30.c

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

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

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

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

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

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

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

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

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

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

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

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

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15.20.30.f

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

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

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

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

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

15.20.30.g

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



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

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

15.20.30.h

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

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

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

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

15.20.30.i

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

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

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

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

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

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

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

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

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

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

Approaches for scoring include:

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

15.20.30.l

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

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

15.20.30.m

**Determining the Apparent Successful Contractor and Unsuccessful Firms.** Based on the evaluation team's recommendation for award, an apparent successful contractor is selected. Notify the firm in writing.

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

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**Note:** GA WEBS has a notification function, but a copy of the notification is not provided to the agency; it remains in the system. Agencies should, therefore, continue to send notification to bidders directly, in order to clearly document that written notification was provided.

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

15.20.30.n

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

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

Other types of optional documentation may include:

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

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

15.20.30.o

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

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

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

15.20.30.p

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

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

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

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

15.20.30.q

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

15.20.30.r

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

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

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

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**15.20.35**

January 1, 2008

**Requirements of international trade agreements – executive cabinet agencies only**

15.20.35.a

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

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

Executive cabinet agencies that make purchases of goods and services in the amount of the current WTO threshold of \$528,000 or more (inclusive of all costs and fees, expenses, taxes, etc.) must adhere to the GPA for their competitive purchases, with certain exemptions. This threshold is adjusted every two years.

15.20.35.b

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

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

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



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- Non-contractual agreements of any form of government assistance not specifically covered, including grants, loans, cooperative agreements, etc.;
- Contract/purchases conducted by the State on behalf of local government agencies;
- Procurement made by a covered entity on behalf of non-covered entities at a different level of government;
- Acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt;
- Additional goods or services by the original supplier that are intended either as replacement parts for existing supplies or installations, or as the extension of existing supplies, services or installations where a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services;
- Prototypes or a first product or service which are developed in the course of, and for, a particular contract for research, experiment, study or original development; and
- Services below the \$528,000 threshold.

If personal services are needed that are estimated to meet or exceed the WTO threshold of \$528,000 and are not otherwise exempt in the foregoing list, they are subject to the GPA.

15.20.35.c

**WTO Competition - Executive Cabinet Agencies.** Requirements related to WTO competition are as follows:

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

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

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

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

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

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

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

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**15.20.40**

July 26, 2009

**Master personal service contracts and convenience personal service contracts**

15.20.40.a

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

15.20.40.b

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

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

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

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

More information on these contracts is available on the GA website at: <http://www.ga.wa.gov/purchase/contracts.htm>.

**Personal Service Contracts**

15.20.40.c

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

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

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

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

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

15.20.40.d

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

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

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

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

### Personal Service Contracts

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

15.20.40.f **Second-tier Competitive Process under Master Personal Service Contracts.** The second-tier competitive process conducted under the master personal service contracts must comply with the minimum standards noted below.

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

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

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

Contract amount \$20,000 or more:

- Draft written solicitation using format prescribed by agency holding master contract. Solicitation must describe the scope of work, the proposed schedule for services, request for firm's qualifications/ experience, commitment to meeting schedule, cost or fees to provide the services, evaluation criteria, and due date/time and address for written responses.

## Personal Service Contracts

- Issue request to a minimum of six firms under the category of services needed. More is preferable. Document why, if fewer than six firms are issued the solicitation.
- Conduct evaluation of responses with a minimum of three individuals.
- Notify successful and unsuccessful proposers of the award decision in writing (in addition to the notice generated in GA WEBS).
- Document rationale for award decision.
- Conduct debriefing conferences, if requested.

15.20.40.g

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

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

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

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

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

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

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**15.20.50**

July 1, 2007

**Exceptions to the competitive procurement requirements**

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

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

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



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**15.20.60**

July 26, 2009

**Posting and advertising sole source contracts**

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

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

15.20.60.a

**Sole Source Posting and Advertisement.** The sole source posting and advertisement shall include at a minimum:

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

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

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

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

15.20.60.b

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

**Personal Service Contracts**

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

## 15.20.60.c

**Exemptions to Sole Source Posting and Advertisement Requirements.**

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

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