

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1193

Chapter 101, Laws of 1998

55th Legislature
1998 Regular Session

PERSONAL SERVICE CONTRACTS

EFFECTIVE DATE: 6/11/98

Passed by the House March 7, 1998
Yeas 95 Nays 0

CLYDE BALLARD
**Speaker of the
House of Representatives**

Passed by the Senate March 2, 1998
Yeas 39 Nays 0

BRAD OWEN
President of the Senate

Approved March 23, 1998

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1193** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

March 23, 1998 - 4:15 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1193

Passed Legislature - 1998 Regular Session

AS AMENDED BY THE SENATE

Passed Legislature - 1998 Regular Session

State of Washington 55th Legislature 1997 Regular Session

By House Committee on Government Administration (originally sponsored by Representatives D. Schmidt, Dunn, L. Thomas, Wolfe, Scott and Wensman)

Read first time 02/14/97.

1 AN ACT Relating to personal service contracts; amending RCW
2 39.29.003, 39.29.006, 39.29.011, 39.29.016, 39.29.018, 39.29.025,
3 39.29.040, 39.29.055, 39.29.065, and 39.29.068; adding a new section to
4 chapter 39.29 RCW; and repealing RCW 39.29.035.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 39.29.003 and 1993 c 433 s 1 are each amended to read
7 as follows:

8 It is the intent of this chapter to establish a policy of open
9 competition for all personal service contracts ((~~and subcontracts to~~
10 ~~personal service contracts~~)) entered into by state agencies, unless
11 specifically exempted under this chapter. It is further the intent to
12 provide for legislative and executive review of all personal service
13 contracts, to centralize the location of information about personal
14 service contracts for ease of public review, and ensure proper
15 accounting of personal services expenditures.

16 **Sec. 2.** RCW 39.29.006 and 1993 c 433 s 2 are each amended to read
17 as follows:

18 As used in this chapter:

1 (1) "Agency" means any state office or activity of the executive
2 and judicial branches of state government, including state agencies,
3 departments, offices, divisions, boards, commissions, and educational,
4 correctional, and other types of institutions.

5 (2) "Client services" means services provided directly to agency
6 clients including, but not limited to, medical and dental services,
7 employment and training programs, residential care, and subsidized
8 housing.

9 (3) "Competitive solicitation" means a documented formal process
10 providing an equal and open opportunity to qualified parties and
11 culminating in a selection based on criteria which may include such
12 factors as the consultant's fees or costs, ability, capacity,
13 experience, reputation, responsiveness to time limitations,
14 responsiveness to solicitation requirements, quality of previous
15 performance, and compliance with statutes and rules relating to
16 contracts or services.

17 (4) "Consultant" means an independent individual or firm
18 contracting with an agency to perform a service or render an opinion or
19 recommendation according to the consultant's methods and without being
20 subject to the control of the agency except as to the result of the
21 work. The agency monitors progress under the contract and authorizes
22 payment.

23 (5) "Emergency" means a set of unforeseen circumstances beyond the
24 control of the agency that either:

25 (a) Present a real, immediate threat to the proper performance of
26 essential functions; or

27 (b) May result in material loss or damage to property, bodily
28 injury, or loss of life if immediate action is not taken.

29 (6) "Evidence of competition" means documentation demonstrating
30 that the agency has solicited responses from multiple firms in
31 selecting a consultant.

32 (7) "Personal service" means professional or technical expertise
33 provided by a consultant to accomplish a specific study, project, task,
34 or other work statement. This term does not include purchased services
35 as defined under subsection (9) of this section. This term does
36 include client services.

37 (8) "Personal service contract" means an agreement, or any
38 amendment thereto, with a consultant for the rendering of personal
39 services to the state which is consistent with RCW 41.06.380.

1 (9) "Purchased services" means services provided by a vendor to
2 accomplish routine, continuing and necessary functions. This term
3 includes, but is not limited to, services acquired under RCW 43.19.190
4 or 43.105.041 for equipment maintenance and repair; operation of a
5 physical plant; security; computer hardware and software maintenance;
6 data entry; key punch services; and computer time-sharing, contract
7 programming, and analysis.

8 (10) "Sole source" means a consultant providing professional or
9 technical expertise of such a unique nature that the consultant is
10 clearly and justifiably the only practicable source to provide the
11 service. The justification shall be based on either the uniqueness of
12 the service or sole availability at the location required.

13 (~~((11) "Subcontract" means a contract assigning some of the work of
14 a contract to a third party.))~~)

15 **Sec. 3.** RCW 39.29.011 and 1987 c 414 s 3 are each amended to read
16 as follows:

17 All personal service contracts shall be entered into pursuant to
18 competitive solicitation, except for:

19 (1) Emergency contracts;

20 (2) Sole source contracts;

21 (3) Contract amendments;

22 (4) Contracts between a consultant and an agency of less than
23 ~~((ten))~~ twenty thousand dollars. However, contracts of ~~((two))~~ five
24 thousand ~~((five hundred))~~ dollars or greater but less than ~~((ten))~~
25 twenty thousand dollars shall have documented evidence of competition.

26 Agencies shall not structure contracts to evade these requirements; and

27 (5) Other specific contracts or classes or groups of contracts
28 exempted from the competitive solicitation process by the director of
29 the office of financial management when it has been determined that a
30 competitive solicitation process is not appropriate or cost-effective.

31 **Sec. 4.** RCW 39.29.016 and 1996 c 288 s 29 are each amended to read
32 as follows:

33 Emergency contracts shall be filed with the office of financial
34 management ~~((and the joint legislative audit and review committee))~~ and
35 made available for public inspection within three working days
36 following the commencement of work or execution of the contract,
37 whichever occurs first. Documented justification for emergency

1 contracts shall be provided to the office of financial management ((and
2 the joint legislative audit and review committee)) when the contract is
3 filed.

4 **Sec. 5.** RCW 39.29.018 and 1996 c 288 s 30 are each amended to read
5 as follows:

6 (1) Sole source contracts shall be filed with the office of
7 financial management ((and the joint legislative audit and review
8 committee)) and made available for public inspection at least ten
9 working days prior to the proposed starting date of the contract.
10 Documented justification for sole source contracts shall be provided to
11 the office of financial management ((and the joint legislative audit
12 and review committee)) when the contract is filed. For sole source
13 contracts of ((ten)) twenty thousand dollars or more ((that are state
14 funded)), documented justification shall include evidence that the
15 agency attempted to identify potential consultants by advertising
16 through state-wide or regional newspapers.

17 (2) The office of financial management shall approve sole source
18 contracts of ((ten)) twenty thousand dollars or more ((that are state
19 funded,)) before any such contract becomes binding and before any
20 services may be performed under the contract. These requirements shall
21 also apply to sole source contracts of less than ((ten)) twenty
22 thousand dollars if the total amount of such contracts between an
23 agency and the same consultant is ((ten)) twenty thousand dollars or
24 more within a fiscal year. Agencies shall ensure that the costs, fees,
25 or rates negotiated in filed sole source contracts of ((ten)) twenty
26 thousand dollars or more are reasonable.

27 **Sec. 6.** RCW 39.29.025 and 1996 c 288 s 31 are each amended to read
28 as follows:

29 (1) Substantial changes in either the scope of work specified in
30 the contract or in the scope of work specified in the formal
31 solicitation document must generally be awarded as new contracts.
32 Substantial changes executed by contract amendments must be submitted
33 to the office of financial management ((and the joint legislative audit
34 and review committee)), and are subject to approval by the office of
35 financial management.

36 (2) An amendment or amendments to personal service contracts, if
37 the value of the amendment or amendments, whether singly or

1 cumulatively, exceeds fifty percent of the value of the original
2 contract must be provided to the office of financial management (~~and~~
3 ~~the joint legislative audit and review committee~~)).

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

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

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

15 **Sec. 7.** RCW 39.29.040 and 1996 c 2 s 19 are each amended to read
16 as follows:

17 This chapter does not apply to:

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

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

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

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

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

35 (6) Contracts for client services;

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

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

3 (9) Contracts for bank supervision authorized under RCW 30.38.040.

4 **Sec. 8.** RCW 39.29.055 and 1996 c 288 s 32 are each amended to read
5 as follows:

6 (1) (~~State-funded~~) Personal service contracts subject to
7 competitive solicitation shall be (a) filed with the office of
8 financial management ((and the joint legislative audit and review
9 committee)) and made available for public inspection ((at least ten
10 working days before the proposed starting date of the contract)); and
11 (b) reviewed and approved by the office of financial management when
12 those contracts provide services relating to management consulting,
13 organizational development, marketing, communications, employee
14 training, or employee recruiting.

15 (2) (~~The office of financial management shall review and approve~~
16 ~~state-funded~~) Personal service contracts subject to competitive
17 solicitation that provide services relating to management consulting,
18 organizational development, marketing, communications, employee
19 training, or employee recruiting shall be made available for public
20 inspection at least ten working days before the proposed starting date
21 of the contract. All other contracts shall be effective no earlier
22 than the date they are filed with the office of financial management.

23 **Sec. 9.** RCW 39.29.065 and 1987 c 414 s 8 are each amended to read
24 as follows:

25 To implement this chapter, the director of the office of financial
26 management shall establish procedures for the competitive solicitation
27 and award of personal service contracts, recordkeeping requirements,
28 and procedures for the reporting and filing of contracts. For
29 reporting purposes, the director may establish categories for grouping
30 of contracts. The procedures required under this section shall also
31 include the criteria for amending personal service contracts. At the
32 beginning of each biennium, the director may, by administrative policy,
33 adjust the dollar thresholds prescribed in RCW 39.29.011, 39.29.018,
34 39.29.040, and 39.29.068 to levels not to exceed the percentage
35 increase in the implicit price deflator. Adjusted dollar thresholds
36 shall be rounded to the nearest five hundred dollar increment.

1 **Sec. 10.** RCW 39.29.068 and 1993 c 433 s 8 are each amended to read
2 as follows:

3 The office of financial management shall maintain a publicly
4 available list of all personal service contracts entered into by state
5 agencies during each fiscal year. The list shall identify the
6 contracting agency, the contractor, the purpose of the contract,
7 effective dates and periods of performance, the cost of the contract
8 and funding source, any modifications to the contract, and whether the
9 contract was competitively procured or awarded on a sole source basis.
10 The office of financial management shall also ensure that state
11 accounting definitions and procedures are consistent with RCW 39.29.006
12 and permit the reporting of personal services expenditures by agency
13 and by type of service. Designations of type of services shall
14 include, but not be limited to, management and organizational services,
15 legal and expert witness services, financial services, computer and
16 information services, social or technical research, marketing,
17 communications, and employee training or recruiting services. The
18 office of financial management shall report annually to the fiscal
19 committees of the senate and house of representatives on sole source
20 contracts filed under this chapter. The report shall describe: (1)
21 The number and aggregate value of contracts for each category
22 established in this section; (2) the number and aggregate value of
23 contracts of ~~((two))~~ five thousand ~~((five hundred))~~ dollars or greater
24 but less than ~~((ten))~~ twenty thousand dollars; (3) the number and
25 aggregate value of contracts of ~~((ten))~~ twenty thousand dollars or
26 greater; (4) the justification provided by agencies for the use of sole
27 source contracts; and (5) any trends in the use of sole source
28 contracts.

29 NEW SECTION. **Sec. 11.** A new section is added to chapter 39.29 RCW
30 to read as follows:

31 Personal service contracts awarded by institutions of higher
32 education from nonstate funds do not have to be filed in advance and
33 approved by the office of financial management. Any such contract is
34 subject to all other requirements of this chapter, including the
35 requirements under RCW 39.29.068 for annual reporting of personal
36 service contracts to the office of financial management.

1 NEW SECTION. **Sec. 12.** RCW 39.29.035 and 1993 c 433 s 4 are each
2 repealed.

Passed the House March 7, 1998.

Passed the Senate March 2, 1998.

Approved by the Governor March 23, 1998.

Filed in Office of Secretary of State March 23, 1998.