
ENGROSSED HOUSE BILL 1404

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By Representatives Ogden, Silver, Chandler, Sommers, Fuhrman, Locke, Valle, Ballasiotes, Jones, Roland, Brough, Long, Foreman, Ballard, Wood, Miller, Forner, Tate, Schoesler, Reams, Morton and J. Kohl; by request of Legislative Budget Committee

Read first time 01/27/93. Referred to Committee on State Government.

1 AN ACT Relating to personal service contracts; amending RCW
2 39.29.003, 39.29.006, and 39.29.018; adding new sections to chapter
3 39.29 RCW; and adding a new section to chapter 39.80 RCW.

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

5 **Sec. 1.** RCW 39.29.003 and 1987 c 414 s 1 are each amended to read
6 as follows:

7 It is the intent of this chapter to establish a policy of open
8 competition for all personal service contracts and subcontracts to
9 personal service contracts entered into by state agencies, unless
10 specifically exempted under this chapter. It is further the intent to
11 provide for legislative and executive review of all personal service
12 contracts ~~((negotiated without an open competitive process))~~, to
13 centralize the location of information about personal service contracts
14 for ease of public review, and ensure proper accounting of personal
15 services expenditures.

16 **Sec. 2.** RCW 39.29.006 and 1987 c 414 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 NEW SECTION. Sec. 3. A new section is added to chapter 39.29 RCW
16 to read as follows:

17 (1) Substantial changes in either the scope of work specified in
18 the contract or in the scope of work specified in the formal
19 solicitation document must generally be awarded as new contracts.
20 Substantial changes executed by contract amendments must be submitted
21 to the office of financial management and the legislative budget
22 committee, and are subject to approval by the office of financial
23 management.

24 (2) An amendment or amendments to personal service contracts, if
25 the value of the amendment or amendments, whether singly or
26 cumulatively, exceeds fifty percent of the value of the original
27 contract must be provided to the office of financial management and the
28 legislative budget committee.

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

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

36 (5) The office of financial management shall approve amendments
37 provided to it under this section only if they meet the criteria for

1 approval of the amendments established by the director of the office of
2 financial management.

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 39.29 RCW
4 to read as follows:

5 If subcontracts and subcontractors are specified in the
6 contractor's response to a competitive solicitation, this constitutes
7 a competitive solicitation of subcontract services. If subcontracts
8 are authorized, but subcontractors are not specifically identified in
9 a contractor's response to a competitive solicitation and the
10 contractor later desires to issue subcontracts, the subcontracts must
11 comply with the competitive solicitation requirements of this chapter,
12 and selection of subcontractors is subject to prior agency approval.

13 **Sec. 5.** RCW 39.29.018 and 1987 c 414 s 5 are each amended to read
14 as follows:

15 (1) Sole source contracts shall be filed with the office of
16 financial management and the legislative budget committee and made
17 available for public inspection at least ten working days prior to the
18 proposed starting date of the contract. Documented justification for
19 sole source contracts shall be provided to the office of financial
20 management and the legislative budget committee when the contract is
21 filed. For sole source contracts of ten thousand dollars or more that
22 are state funded, documented justification shall include evidence that
23 the agency attempted to identify potential consultants by advertising
24 through state-wide or regional newspapers or other appropriate media or
25 by notifying consultants on established bidders' lists approved by the
26 office of financial management.

27 (2) The office of financial management shall approve sole source
28 contracts of ten thousand dollars or more that are state funded, before
29 any such contract becomes binding and before any services may be
30 performed under the contract. These requirements shall also apply to
31 sole source contracts of less than ten thousand dollars if the total
32 amount of such contracts between an agency and the same consultant is
33 ten thousand dollars or more within a fiscal year. The office of
34 financial management shall ensure that the costs, fees, or rates
35 negotiated in filed sole source contracts of ten thousand dollars or
36 more are reasonable.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 39.29 RCW
2 to read as follows:

3 Personal services may be procured only to resolve a particular
4 agency problem or issue or to expedite a specific project that is
5 temporary in nature. An agency may procure personal services only if
6 it documents that:

7 (1) The service is critical to agency responsibilities or
8 operations, or is mandated or authorized by the legislature;

9 (2) Sufficient staffing or expertise is not available within the
10 agency to perform the service; and

11 (3) Other qualified public resources are not available to perform
12 the service.

13 NEW SECTION. **Sec. 7.** A new section is added to chapter 39.29 RCW
14 to read as follows:

15 (1) State-funded personal service contracts subject to competitive
16 solicitation shall be filed with the office of financial management and
17 the legislative budget committee and made available for public
18 inspection at least ten working days before the proposed starting date
19 of the contract.

20 (2) The office of financial management shall review and approve
21 state-funded personal service contracts subject to competitive
22 solicitation that provide services relating to management consulting,
23 organizational development, marketing, communications, employee
24 training, or employee recruiting.

25 NEW SECTION. **Sec. 8.** A new section is added to chapter 39.29 RCW
26 to read as follows:

27 The office of financial management shall maintain a publicly
28 available list of all personal service contracts entered into by state
29 agencies during each fiscal year. The list shall identify the
30 contracting agency, the contractor, the purpose of the contract,
31 effective dates and periods of performance, the cost of the contract
32 and funding source, any modifications to the contract, and whether the
33 contract was competitively procured or awarded on a sole source basis.
34 The office of financial management shall also ensure that state
35 accounting definitions and procedures are consistent with RCW 39.29.006
36 and permit the reporting of personal services expenditures by agency
37 and by type of service. Designations of type of services shall

1 include, but not be limited to, management and organizational services,
2 legal and expert witness services, financial services, computer and
3 information services, social or technical research, marketing,
4 communications, and employee training or recruiting services. The
5 office of financial management shall report annually to the fiscal
6 committees of the senate and house of representatives on sole source
7 contracts filed under this chapter. The report shall describe: (1)
8 The number and aggregate value of contracts for each category
9 established in this section; (2) the number and aggregate value of
10 contracts of two thousand five hundred dollars or greater but less than
11 ten thousand dollars; (3) the number and aggregate value of contracts
12 of ten thousand dollars or greater; (4) the justification provided by
13 agencies for the use of sole source contracts; and (5) any trends in
14 the use of sole source contracts.

15 NEW SECTION. **Sec. 9.** A new section is added to chapter 39.80 RCW
16 to read as follows:

17 Contracts entered into by any state agency for architectural and
18 engineering services, and modifications thereto, shall be reported to
19 the office of financial management on a quarterly basis, in such form
20 as the office of financial management prescribes.

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