

2 **SHB 1193** - S COMM AMD
3 By Committee on Government Operations

4 ADOPTED 3/2/98

5 Strike everything after the enacting clause and insert the
6 following:

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

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

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

19 As used in this chapter:

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

24 (2) "Client services" means services provided directly to agency
25 clients including, but not limited to, medical and dental services,
26 employment and training programs, residential care, and subsidized
27 housing.

28 (3) "Competitive solicitation" means a documented formal process
29 providing an equal and open opportunity to qualified parties and
30 culminating in a selection based on criteria which may include such
31 factors as the consultant's fees or costs, ability, capacity,
32 experience, reputation, responsiveness to time limitations,
33 responsiveness to solicitation requirements, quality of previous
34 performance, and compliance with statutes and rules relating to
35 contracts or services.

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

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

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

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

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

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

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

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

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

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

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

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

5 (1) Emergency contracts;

6 (2) Sole source contracts;

7 (3) Contract amendments;

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

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

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

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

19 Emergency contracts shall be filed with the office of financial
20 management ~~((and the joint legislative audit and review committee))~~ and
21 made available for public inspection within three working days
22 following the commencement of work or execution of the contract,
23 whichever occurs first. Documented justification for emergency
24 contracts shall be provided to the office of financial management ~~((and~~
25 ~~the joint legislative audit and review committee))~~ when the contract is
26 filed.

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

29 (1) Sole source contracts shall be filed with the office of
30 financial management ~~((and the joint legislative audit and review~~
31 ~~committee))~~ and made available for public inspection at least ten
32 working days prior to the proposed starting date of the contract.
33 Documented justification for sole source contracts shall be provided to
34 the office of financial management ~~((and the joint legislative audit~~
35 ~~and review committee))~~ when the contract is filed. For sole source
36 contracts of ~~((ten))~~ twenty thousand dollars or more ~~((that are state~~
37 ~~funded))~~, documented justification shall include evidence that the

1 agency attempted to identify potential consultants by advertising
2 through state-wide or regional newspapers.

3 (2) The office of financial management shall approve sole source
4 contracts of (~~ten~~) twenty thousand dollars or more (~~that are state~~
5 ~~funded,~~) before any such contract becomes binding and before any
6 services may be performed under the contract. These requirements shall
7 also apply to sole source contracts of less than (~~ten~~) twenty
8 thousand dollars if the total amount of such contracts between an
9 agency and the same consultant is (~~ten~~) twenty thousand dollars or
10 more within a fiscal year. Agencies shall ensure that the costs, fees,
11 or rates negotiated in filed sole source contracts of (~~ten~~) twenty
12 thousand dollars or more are reasonable.

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

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

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

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

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

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

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

3 This chapter does not apply to:

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

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

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

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

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

21 (6) Contracts for client services;

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

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

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

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

29 (1) ~~((State-funded))~~ Personal service contracts subject to
30 competitive solicitation shall be (a) filed with the office of
31 financial management ~~((and the joint legislative audit and review~~
32 ~~committee))~~ and made available for public inspection ~~((at least ten~~
33 ~~working days before the proposed starting date of the contract));~~ and
34 (b) reviewed and approved by the office of financial management when
35 those contracts provide services relating to management consulting,
36 organizational development, marketing, communications, employee
37 training, or employee recruiting.

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

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

11 To implement this chapter, the director of the office of financial
12 management shall establish procedures for the competitive solicitation
13 and award of personal service contracts, recordkeeping requirements,
14 and procedures for the reporting and filing of contracts. For
15 reporting purposes, the director may establish categories for grouping
16 of contracts. The procedures required under this section shall also
17 include the criteria for amending personal service contracts. At the
18 beginning of each biennium, the director may, by administrative policy,
19 adjust the dollar thresholds prescribed in RCW 39.29.011, 39.29.018,
20 39.29.040, and 39.29.068 to levels not to exceed the percentage
21 increase in the implicit price deflator. Adjusted dollar thresholds
22 shall be rounded to the nearest five hundred dollar increment.

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

25 The office of financial management shall maintain a publicly
26 available list of all personal service contracts entered into by state
27 agencies during each fiscal year. The list shall identify the
28 contracting agency, the contractor, the purpose of the contract,
29 effective dates and periods of performance, the cost of the contract
30 and funding source, any modifications to the contract, and whether the
31 contract was competitively procured or awarded on a sole source basis.
32 The office of financial management shall also ensure that state
33 accounting definitions and procedures are consistent with RCW 39.29.006
34 and permit the reporting of personal services expenditures by agency
35 and by type of service. Designations of type of services shall
36 include, but not be limited to, management and organizational services,
37 legal and expert witness services, financial services, computer and

1 information services, social or technical research, marketing,
2 communications, and employee training or recruiting services. The
3 office of financial management shall report annually to the fiscal
4 committees of the senate and house of representatives on sole source
5 contracts filed under this chapter. The report shall describe: (1)
6 The number and aggregate value of contracts for each category
7 established in this section; (2) the number and aggregate value of
8 contracts of ~~((two))~~ five thousand ~~((five hundred))~~ dollars or greater
9 but less than ~~((ten))~~ twenty thousand dollars; (3) the number and
10 aggregate value of contracts of ~~((ten))~~ twenty thousand dollars or
11 greater; (4) the justification provided by agencies for the use of sole
12 source contracts; and (5) any trends in the use of sole source
13 contracts.

14 NEW SECTION. Sec. 11. A new section is added to chapter 39.29 RCW
15 to read as follows:

16 Personal service contracts awarded by institutions of higher
17 education from nonstate funds do not have to be filed in advance and
18 approved by the office of financial management. Any such contract is
19 subject to all other requirements of this chapter, including the
20 requirements under RCW 39.29.068 for annual reporting of personal
21 service contracts to the office of financial management.

22 NEW SECTION. Sec. 12. RCW 39.29.035 and 1993 c 433 s 4 are each
23 repealed."

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27 On page 1, line 1 of the title, after "contracts;" strike the
28 remainder of the title and insert "amending RCW 39.29.003, 39.29.006,
29 39.29.011, 39.29.016, 39.29.018, 39.29.025, 39.29.040, 39.29.055,
30 39.29.065, and 39.29.068; adding a new section to chapter 39.29 RCW;
31 and repealing RCW 39.29.035."

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