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HOUSE BILL 1193

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State of Washington

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By Representatives D. Schmidt, Dunn, L. Thomas, Wolfe, Scott and Wensman

Read first time 01/16/97. Referred to Committee on Government Administration.

1 AN ACT Relating to personal service contracts; amending RCW  
2 39.29.003, 39.29.006, 39.29.011, 39.29.018, 39.29.025, 39.29.040,  
3 39.29.055, 39.29.065, and 39.29.068; and repealing RCW 39.29.035.

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

5 **Sec. 1.** RCW 39.29.003 and 1993 c 433 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, to centralize the location of information about personal  
13 service contracts for ease of public review, and ensure proper  
14 accounting of personal services expenditures.

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

17 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))~~ fifteen thousand dollars. However, contracts of ~~((two))~~ five  
24 thousand ~~((five hundred))~~ dollars or greater but less than ~~((ten))~~  
25 fifteen 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 39.29.018 and 1996 c 288 s 30 are each amended to read  
32 as follows:

33 (1) Sole source contracts shall be filed with the office of  
34 financial management ~~((and the joint legislative audit and review  
35 committee))~~ and made available for public inspection at least ten  
36 working days prior to the proposed starting date of the contract.  
37 Documented justification for sole source contracts shall be provided to

1 the office of financial management (~~and the joint legislative audit~~  
2 ~~and review committee~~) when the contract is filed. For sole source  
3 contracts of (~~ten~~) fifteen thousand dollars or more (~~that are state~~  
4 ~~funded~~), documented justification shall include evidence that the  
5 agency attempted to identify potential consultants by advertising  
6 through state-wide or regional newspapers.

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

17 **Sec. 5.** RCW 39.29.025 and 1996 c 288 s 31 are each amended to read  
18 as follows:

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

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

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

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

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

5 **Sec. 6.** RCW 39.29.040 and 1996 c 2 s 19 are each amended to read  
6 as follows:

7 This chapter does not apply to:

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

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

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

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

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

25 (6) Contracts for client services;

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

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

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

31 **Sec. 7.** RCW 39.29.055 and 1996 c 288 s 32 are each amended to read  
32 as follows:

33 (1) ~~((State-funded))~~ Personal service contracts subject to  
34 competitive solicitation shall be filed with the office of financial  
35 management ~~((and the joint legislative audit and review committee))~~ and  
36 made available for public inspection at least ten working days before  
37 the proposed starting date of the contract.

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.

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

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

20 **Sec. 9.** RCW 39.29.068 and 1993 c 433 s 8 are each amended to read  
21 as follows:

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

1 committees of the senate and house of representatives on sole source  
2 contracts filed under this chapter. The report shall describe: (1)  
3 The number and aggregate value of contracts for each category  
4 established in this section; (2) the number and aggregate value of  
5 contracts of ~~((two))~~ five thousand ~~((five hundred))~~ dollars or greater  
6 but less than ~~((ten))~~ fifteen thousand dollars; (3) the number and  
7 aggregate value of contracts of ~~((ten))~~ fifteen thousand dollars or  
8 greater; (4) the justification provided by agencies for the use of sole  
9 source contracts; and (5) any trends in the use of sole source  
10 contracts.

11 NEW SECTION. **Sec. 10.** RCW 39.29.035 and 1993 c 433 s 4 are each  
12 repealed.

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