

Chapter 210-03 WAC

FINANCING CONTRACTS

WAC

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PROGRAM AUTHORIZATION

WAC 210-03-010 Authorization. Chapter 39.94 RCW provides for financing of both real and personal property by state agencies and other agencies through the use of financing contracts. The state finance committee must approve all financing contracts issued on behalf of the state of Washington. Transactions may be financed with certificates of participation (COPs). Certificates of participation represent ownership interests, or participation, in the future stream of lease payments. Certificates of participation are issued on behalf of the state pursuant to a lease of financed assets that provide collateral to the lender. The state finance committee has delegated administrative responsibility for the lease/purchase program to the office of the state treasurer. The office of the state treasurer may pool financing requests in the name of the state of Washington to access municipal securities markets with lower, tax-exempt interest rates.

The office of the state treasurer classifies financing transactions as operating leases (true leases) or financing contracts based upon the criteria established by the Governmental Accounting Standards Board (based upon FASB 13). If any one of the following criteria is met, the lease is considered a financing contract subject to chapter 39.94 RCW:

- (1) Present value of lease payments > 90% of fair market value.
- (2) Lease term > 75% of useful life.
- (3) Lease includes a bargain purchase option.
- (4) Lease provides for transfer of ownership.

If a lease satisfies any one of the above criteria, it is a financing contract subject to chapter 39.94 RCW.

[Statutory Authority: RCW 39.94.040. 01-11-062, § 210-03-010, filed 5/11/01, effective 6/11/01.]

(5/11/01)

GENERAL

WAC 210-03-020 Definitions. For purposes of this rule, the following definitions shall apply:

(1) "LOCAL" means local option capital asset lending program.

(2) "Program" means the administration of financing contracts and is referred to herein as the lease/purchase program, including state agency financing, and the LOCAL program.

(3) "COP" means certificates of participation.

[Statutory Authority: RCW 39.94.040. 01-11-062, § 210-03-020, filed 5/11/01, effective 6/11/01.]

APPLYING TO THE PROGRAM

WAC 210-03-030 Filing notice of intent. A state agency or other agency may apply to the financing program by submitting a notice of intent on the approved form. State finance committee approved forms are available from the office of the state treasurer.

The signed notice of intent should be mailed to:

Office of the State Treasurer

Debt Management

P.O. Box 40200

Olympia WA 98504-0200

(1) For state agency participation, additional forms may be required, including, but not limited to, the following:

(a) Equipment financing forms provided by the office of the state treasurer:

(i) Notice of intent - Notifies the office of the state treasurer of dollar amounts, dates and contact person(s) for upcoming financings.

(ii) Certificate of authorized signers - This document is to be prepared on agency letterhead. An original certificate may be filed with the state treasurer so that photocopies may be submitted with future equipment financing transactions.

(iii) State agency financing addendum - Establishes the contractual obligations of the state agency in the transaction and confirms the intent of the agency to acquire equipment through installment purchase agreements and remit installment payments to the office of the state treasurer.

(iv) Personal property certificate - Describes the equipment, the vendor(s), and the amount to be financed and directions for disbursement.

(v) Certificate of insurance - This document is prepared by the office of risk management and sent directly to the state treasurer.

(b) Real estate financing forms provided by the office of the state treasurer:

(i) Notice of intent - Notifies the office of the state treasurer of dollar amounts, dates and contact person(s) for upcoming financings.

(ii) Real estate worksheet - To be completed by the state agency - This document provides information about the real property to be financed.

(iii) Certificate of authorized signers - This document is to be prepared on agency letterhead when someone other than the agency director will be signing on behalf of the state agency.

(iv) Financing contract real property - Agreement between the state agency and the nominal lessor that provides for the use of the land and facility in exchange for lease payments to be made by the agency. The office of the state treasurer appoints a nominal lessor.

(v) Site lease - State agency - Agreement between the state agency and the nominal lessor that provides for the lease of the land for a period that usually extends five years beyond the term of the financing lease. The site lease provides security for the financing lease.

(vi) Tax certificate - Information about compliance with IRS regulations to ensure the tax-exempt status of the financing. By signing the tax certificate, the agency acknowledges it has read, understands and will comply with the IRS regulations.

(2) For other agency participation, additional forms may be required, including, but not limited to, the following:

(a) Equipment financing forms provided by the office of the state treasurer:

(i) Notice of intent - Notifies the office of the state treasurer of dollar amounts, dates and contact person(s) for upcoming financings.

(ii) Credit form - Information to judge the agency's legal ability to incur the debt (assessment of debt capacity) and its ability to repay the debt (assessment of debt affordability).

(iii) Form of reimbursement resolution - Required if agency is planning to seek reimbursement through the LOCAL program.

(iv) Authorizing resolution or, for cities, authorizing ordinance - Authorizes the financing of the property through the LOCAL program and designates the number of individuals required to execute the financing with the office of the state treasurer.

(v) Certificate of authorizing resolution or ordinance - To certify a true copy of a resolution.

(vi) Certificate of authorized agency representatives - Designates the agency representatives authorized to execute the financing and states the number of signatures required.

(vii) Financing contract personal property - Local agency - Establishes the contractual obligations of the local agency in the transaction and confirms the intent of the agency to acquire equipment through installment purchase agreements and remit installment payments to the office of the state treasurer.

(viii) Personal property certificate - Describes the equipment, the vendor(s), and the amount to be financed and directions for disbursement.

(ix) Opinion of local agency counsel - Legal opinion on behalf of the local agency verifying its authority to enter into the contract. It is not the intent of this requirement to solicit a local counsel opinion on the financing documents.

(x) Tax certificate - Information about compliance with IRS regulations to ensure the tax-exempt status of the financing. By signing the tax certificate, the agency acknowledges

it has read, understands and will comply with the IRS regulations.

(xi) Certificate of compliance with agency debt limits.

(b) Real estate financing forms provided by the office of the state treasurer:

(i) Notice of intent - Notifies the office of the state treasurer of upcoming financing dollar amounts, dates and contact person(s).

(ii) Real estate worksheet - Provides information about the real property to be financed.

(iii) Credit form - Provides the information needed to analyze the agency's legal ability to incur the debt (assessment of debt capacity) and its ability to repay the debt (assessment of debt affordability).

(iv) Form of reimbursement resolution - Required if agency is planning to seek reimbursement through the LOCAL program.

(v) Authorizing resolution or authorizing ordinance - Authorizes the financing of the property through the LOCAL program and designates the number of individual(s) required to execute the financing with the office of the state treasurer.

(vi) Certificate of authorizing resolution or ordinance - To certify a true copy of a resolution.

(vii) Certificate of authorized agency representatives - Designates the agency representatives authorized to execute the financing and states the number of signatures required.

(viii) Financing contract real property - Local agency - Agreement between the local agency and the nominal lessor that provides for the use of the land and facility in exchange for lease payments to be made by the agency. The office of the state treasurer appoints a nominal lessor.

(ix) Site lease - Local agency - Agreement between the local agency and the nominal lessor that provides for the lease of the land for a period that usually extends five years beyond the term of the financing lease. The site lease provides security for the financing lease.

(x) Opinion of local agency counsel - Legal opinion on behalf of the local agency verifying its authority to enter into the contract and that the agency has legally adopted the resolution(s). It is not the intent of this requirement to solicit a local counsel opinion on the financing documents.

(xi) Tax certificate - Information about compliance with IRS regulations to ensure the tax-exempt status of the financing. By signing the tax certificate, the agency acknowledges it has read, understands and will comply with the IRS regulations.

(xii) Certificate of compliance with agency debt limits

(c) Information to be provided by the local agency:

(i) Evidence of insurance - A local agency should contact its insurance agent to obtain a certificate of insurance on the property to be financed. At a minimum, hazard insurance for the amount of the financing (or guaranteed replacement) and a one million dollar liability policy are required. The local agency may be asked to list the fiscal agent and/or nominal lessor as additional insureds.

(ii) Title insurance - The agency should provide a copy of its title insurance policy for real property transactions. A new title policy may be ordered for the financing.

(iii) Evidence of incumbency of governing body and elected officials - School districts obtain a certificate from their ESD identifying the district, names and terms of office

of board members and superintendent; other districts obtain a certificate from county auditor, identifying the governing body, with names and terms of office; all districts should include copy of minutes showing election of current officers, and, in the case of cities, a certificate of the mayor, identifying the city clerk.

(2) The local government is responsible for completing all required documentation and providing it to the office of the state treasurer with original signatures by the cutoff date to be included in the next financing.

[Statutory Authority: RCW 39.94.040. 01-11-062, § 210-03-030, filed 5/11/01, effective 6/11/01.]

REVIEW OF APPLICATION TO THE PROGRAM

WAC 210-03-040 Review of notice of intent. The office of the state treasurer staff will review the notice of intent for completeness, essentiality of equipment/real estate project, length of finance term, amount of financing, useful life of equipment and compliance with other financing requirements and tax laws.

[Statutory Authority: RCW 39.94.040. 01-11-062, § 210-03-040, filed 5/11/01, effective 6/11/01.]

APPROVAL FOR PARTICIPATION IN THE PROGRAM

WAC 210-03-050 State agency participation. The state finance committee must approve all financing contracts. Agencies should submit a notice of intent to lease/purchase on the approved form at the time of the financing decision. The notice of intent to lease/purchase must be used to apply for financing of both equipment and/or real estate.

(1) All real estate projects must be specifically approved by the legislature. Authorization must exist in the current biennium in order to be eligible for financing.

(2) Equipment financing information shall be provided on approved forms designated by the office of the state treasurer and approved by the state finance committee.

(3) Financing requests must meet the minimum amount and the terms established by the state financing committee. The office of the state treasurer may alter the finance term requested by an agency and/or the structure of a transaction in order to improve the marketability of securities issues or when it otherwise believes it will be advantageous to do so for either the agency, the state, or the program.

[Statutory Authority: RCW 39.94.040. 01-11-062, § 210-03-050, filed 5/11/01, effective 6/11/01.]

WAC 210-03-060 Other agency participation. The LOCAL program is available for personal and real property. All applicants must receive approval from the office of the state treasurer to finance through the LOCAL program. Applicants approved for participation will receive notification by the office of the state treasurer.

(1) The required forms shall be designated by the office of the state treasurer and approved by the state finance committee.

(2) Documents must be completed by the agency and signed by an authorized representative of the agency. Each

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financing document must have an original signature and be returned to the office of the state treasurer.

(3) After written approval for financing is received, a LOCAL participant may acquire and pay for the property. Approval for financing may be contingent on certain criteria being satisfied.

[Statutory Authority: RCW 39.94.040. 01-11-062, § 210-03-060, filed 5/11/01, effective 6/11/01.]

TIMING OF ISSUANCE

WAC 210-03-070 Financing participation deadlines.

(1) The office of the state treasurer may pool state agency equipment and LOCAL participants' requests for financing of equipment and real estate into regularly scheduled offerings of certificates of participation. Only applications that have completed information on the required forms will be included in the financing.

(2) Real estate projects for state agencies are financed on an individual basis provided there is a minimum of ninety days for document preparation.

[Statutory Authority: RCW 39.94.040. 01-11-062, § 210-03-070, filed 5/11/01, effective 6/11/01.]

FINANCING CONTRACT PAYMENTS

WAC 210-03-080 Scheduled payments. The state finance committee may designate a fiscal agent as trustee as provided in RCW 39.94.040. Payments may be directed to the fiscal agent as trustee on behalf of the state. Pursuant to RCW 39.94.030, all payments shall be made according to the terms and scheduled payments dates listed in the financing contract.

[Statutory Authority: RCW 39.94.040. 01-11-062, § 210-03-080, filed 5/11/01, effective 6/11/01.]