

**PORT OF EVERETT
MANAGEMENT OF PERSONAL SERVICE CONTRACTS**

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PORT OF EVERETT MANAGEMENT OF PERSONAL SERVICE CONTRACTS

A. INTRODUCTION

2SHB 3274

Second Substitute House Bill 3274 was passed by the Washington State Legislature and signed into law by the Governor during March 2008. Among other amendments and additions to the RCW, a new chapter was added to Title 53 RCW, which establishes a policy of open competition for all personal service contracts.

These guidelines set forth the policies provided for under the new chapter of Title 53 and should be used in conjunction with existing port policies, with the statutory requirements prevailing over port policies.

These guidelines only apply to personal service consultant contracts. They do not apply to A&E or other types of consultant contracts.

Effective Date for Implementation

The statutory implementation date for these policies is June 12, 2008.

B. DEFINITIONS

A&E Services – See Professional Services

Commission

- Elected oversight body of an individual port

Competitive Solicitation

- Documented formal process providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria
- Criteria other than price may be the primary basis for consideration
- Criteria may include such factors as consultant's:
 - fees or costs
 - ability
 - capacity
 - experience
 - reputation
 - responsiveness to time limitations
 - responsiveness to solicitation requirements
 - quality of previous performance
 - compliance with statutes and rules relating to contracts or services

Consultant

- An independent individual or firm contracting with a port to perform a service or render an opinion or recommendation according to the consultant's methods and without being subject to the control of the port except as to the result of the work
- The port monitors progress under the contract and authorizes payment

Emergency

- Set of unforeseen circumstances beyond the control of the port that either:
 - present a real, immediate threat to the proper performance of essential functions; or
 - may result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken

Evidence of Competition

- Documentation demonstrating responses were solicited from multiple firms in selecting a consultant

Personal Service

- Professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement, which may not reasonably be required in connection with a public works project meeting the definition in RCW 39.04.010(4).
- Does not include purchased services
- Does not include professional services (A&E) procured using the competitive selection requirements in RCW 39.80

Personal Service Reasonably Required in Connection with a Public Works Project

- The method to identify services reasonably connected with public works projects will be to identify services included in the annual CIP budget as part of an identified public works project. These services may be preliminary to commencement of construction of the public works project (e.g., environmental study to determine if project will be approved by regulators).
- The CIP number will be referenced in the personal service contract

Personal Service Contract

- An agreement, or any amendment thereto, with a consultant for the rendering of personal services to the port

Professional Services (Architectural and Engineering Services)

- Procured using the competitive selection requirements in chapter 39.80 RCW
- Professional services rendered by any person, other than as an employee of the agency, contracting to perform activities within the scope of the general definition of professional practice in chapters 18.08, 18.43, or 18.96 RCW
 - RCW 18.08 – Architects
 - RCW 18.43 – Engineers and Land Surveyors
 - RCW 18.96 – Landscape Architects

Public Works Project

- Defined in RCW 39.04.010(4)
- Includes all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein
- Prevailing wages are required to be paid on all public works, including maintenance

Purchased Services

- Services provided by a vendor to accomplish routine, continuing, and necessary functions
- Includes, but is not limited to:
 - services for equipment maintenance and repair
 - operation of a physical plant
 - security
 - computer hardware and software maintenance
 - data entry
 - key punch services
 - computer time-sharing, contract programming and analysis

Sole Source

- A consultant providing professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service
- The justification shall be based on the:
 - uniqueness of the service,

- sole availability at the location required, or
- warranty or defect correction service obligations of the consultant

C. EXEMPTIONS FROM AND CONTRACTS NOT SUBJECT TO COMPETITIVE SOLICITATION

Exemptions

- Contracts under \$50,000 (contracts are not to be structured to evade competitive solicitation)
- Emergency contracts
- Sole source contracts
- Contract amendments
- Other specific contracts or classes or groups of contracts exempted by the commission when it has been determined that a competitive solicitation process is not appropriate or cost-effective.

Not Subject To

- Contracts which are reasonably required in connection with a public works project
- Contracts awarded to companies that furnish a service where the tariff is established by the utilities and transportation commission or other public entity
- Intergovernmental agreements awarded to any governmental entity, whether federal, state, or local and any department, division, or subdivision thereof
- Contracts awarded for services to be performed for a standard fee, when the standard fee is established by the contracting agency or any other governmental entity and a like contract is available to all qualified applicants
- Contracts for services that are necessary to the conduct of collaborative research if prior approval is granted by the funding source
- Contracts for professional services which are entered into under chapter 39.80 RCW (A&E)
- Contracts for the employment of expert witnesses for the purposes of litigation or legal services to supplement the expertise of port staff

D. SOLICITATION AND REPORTING REQUIREMENTS

0 - \$49,999

- Competitive solicitation process not required by statute. Use standard port policies and procedures.

\$50,000 - \$100,000

- Must solicit responses from multiple firms
- Documentation showing evidence of competition must be on file

Over \$100,000

- Must use formal competitive solicitation process (e.g., advertise in newspaper)
- Documentation of the formal competitive solicitation process must be on file
- Selection can be based on criteria, other than price

Commission Exemptions - \$50,000 or Over

- Commission may exempt specific contracts or classes or groups of contracts from the competitive solicitation process, when it has been determined such process would not be appropriate or cost effective

Contract Amendments to Contracts for \$50,000 or Over

- If the value of an amendment or amendments, whether singly or cumulatively, exceeds 50% of the value of the original contract, the contract must be filed with the commission and made available for public inspection prior to the proposed starting date of services under the amendments

Emergency Contracts - \$50,000 or Over

- Shall be filed with the commission and made available for public inspection within seven (7) working days following the commencement of work or execution of the contract, whichever occurs first.
- Documented justification for emergency contracts shall be provided to the commission when the contract is filed

Sole Source Contracts - \$50,000 or Over

- Shall be filed with the commission and made available for public inspection prior to the proposed starting date of the contract.
- Documented justification shall be provided to the commission when the contract is filed.
- Documented justification shall include evidence that the port attempted to identify potential consultants
- Commission shall ensure costs, fees, or rates negotiated are reasonable

Substantial Changes or Substantial Additions in the Scope of Work for Contracts \$50,000 or Over

- Shall be submitted to the commission for a determination as to whether the change warrants the work to be awarded as a new contract.

Personal Service Contract Matrix

Type of Personal Service Contract	Dollar Amount of Contract	Evidence of Solicitation Required	Formal Competitive Solicitation Required	File Contract w/Commission & Make Available for Public Inspection	Commission Approval Required
Personal Service Not Connected to PW	\$50,000-\$100,000	X			
	Over \$100,000		X		X
Personal Service Connected to PW	\$50,000-\$100,000				
	Over \$100,000		X		X
Sole Source	\$50,000 or Over			X	
Emergencies	\$50,000 or Over			X	
Amendment(s) Exceed 50% of Original	\$50,000 or Over			X	
Substantial Changes to Scope of Work	\$50,000 or Over			X	X

E. EXAMPLES OF PERSONAL SERVICE CONTRACTS

The following list provides samples of some of the types of consultant services that may be considered as personal services under the new statute. (This list is not all-inclusive.)

- Accounting services
- Aerial mapping (if not related to a public works project)
- Analysis and assessment of processes, programs, fiscal impact, compliance, systems, etc.
- Appraisal services
- Certification service
- Economic analysis and consultation
- Environmental planning, technology, studies (except when part of a public works project)
- Executive recruitment
- Financial services
- Feasibility study services (if not related to public works project)

- Foreign trade representative services
- Grant writing
- Graphic design services
- Inventory services
- Lobbying services
- Labor negotiations and labor relations services
- Management consulting marketing services to include identifying market opportunities, conduct marketing programs, planning, promotion, market research surveys, etc.
- Medical and psychological services
- Organization development
- Public relations services
- Promotional services
- Strategic planning
- Training

(On occasion some of the services listed above may qualify as A&E consultant services. For those occasions, the contract would be competitively solicited as defined under RCW 39.80 or other applicable statutes.)

F. PROCEDURES FOR ACQUIRING PERSONAL SERVICES

The Contracts Administrator, Administration Department, is charged with overseeing personal service contracts and the Project Manager is responsible for the management of the contract. When it is determined a personal service is required, the following procedures are to be followed.

- PM – Project Manager: Manages the project and project interaction with consultants
- CA – Contracts Administrator: Oversees the solicitation, contracts and regulatory documentation for the project
- LA – Legal Assistant: Assists both PM and CA in preparation of contracts and maintains centralized personal service contract files

No.	Tasks for Managing Personal Service Contracts	Assigned To		
		PM	CA	LA
1.	Complete the Consultant Services Checklist and submit to the Contracts Administrator	X		
2.	Review checklist and determine the solicitation process to be used		X	
3.	Prepare scope of work (SOW)	X		
4.	Prepare request for proposals (RFP)	X		
5.	Review RFP to ensure regulatory and POE policy compliances are met		X	
6.	Prepares announcement or ad copy for RFP	X	X	
7.	Submits RFP to Builders Exchange and POE web site for posting, if applicable		X	
8.	Places advertisement, if formal process is used		X	
9.	Distributes announcement to selected consultants, if formal process is not used		X	X
10.	Receive RFP submittals to ensure due date and time are met		X	
11.	Select review committee and manage review process of RFP submittals	X		
12.	Schedule consultant interviews, if necessary	X		
13.	Select consultant for award	X		
14.	Negotiate price with selected consultant	X		
15.	Prepare contract and handle return of contract and other required documentation		X	X
16.	Maintain centralized file for personal service contracts and solicitations; Project Manager should maintain a copy of the contract for her/his use			X
17.	Manage contract	X		
18.	Forward completed file to Legal Assistant after contract is closed	X		

No.	Tasks for Managing Personal Service Contracts	Assigned To		
		PM	CA	LA
	Contract Amendments			
19.	Prepare contract amendments	X	X	X
20.	Present to Commission amendments to contract of \$50,000+ when amendments singly or cumulatively exceed 50% of original contract	X		
	Substantial Changes or Substantial Additions to SOW			
21.	Prepare substantial changes or substantial additions to the SOW	X	X	X
22.	Present to the Commission substantial changes or substantial additions to the SOW for contract of \$50,000+; Commission to determine whether to award the additional work or award as a new contract	X		
	Sole Source			
23.	Complete sole source justification form for sole source contract	X		
24.	Review sole source justification and recommend award to Executive Director	X	X	
25.	File with Commission sole source contract of \$50,000+ and make available for public inspection prior to contract starting date		X	
	Emergency			
26.	Prepare justification for emergency contract and provide to Contracts Administrator for review	X		
27.	Submit justification for emergency contract to Executive Director for approval	X	X	
28.	Assist Executive Director, if necessary, with filing emergency contract of \$50,000+ with Commission and making available for public inspection within 7 working days following the commencement of work or the execution of the contract, whichever occurs first		X	

G. PENALTIES

The statute sets a \$300 civil penalty for a port commissioner or employee who willfully or intentionally fails to comply with the competitive procurement and other requirements of the new chapter to RCW 53. And, sets a civil penalty of \$300 or 25% of the contract amount for any consultant who knowingly violates this chapter. The state auditor is responsible for auditing violations and the attorney general is responsible for prosecuting violations.

PORT OF EVERETT SOLICITATION REQUIREMENTS

Type of Contract	Dollar Amount of Contract	Solicitation Process	Type of Contract	Contract Price	Authorization to Solicit	Awards Contract	Signs Contract	Approves Change Orders
Personal Services – PW Non- Related (Consultant)	\$5,000 or Less	Non-Competitive Select Consultant	PO	Negotiated	Proj Mgr	Proj Mgr	Proj Mgr	Proj Mgr
	\$5,001 - \$49,999	Non-Competitive (Optional) Select Consultant	Personal Services	Negotiated	Exec Dir	Exec Dir	Exec Dir	Exec Dir
	\$50,000 - \$100,000	Competitive Select Consultants Evidence of Competition	Personal Services	Negotiated	Exec Dir	Exec Dir	Exec Dir	Exec Dir
	Over \$100,000	Formal Advertise	Personal Services	Negotiated	Commission	Commission	Exec Dir	Exec Dir or Commission
Personal Services – Related to PW Project (Consultant)	\$5,000 or Less	Non-Competitive Select Consultant	PO	Negotiated	Proj Mgr	Proj Mgr	Proj Mgr	Proj Mgr
	\$5,001 - \$49,999	Non-Competitive (Optional) Select Consultant	Personal Services	Negotiated	Exec Dir	Exec Dir	Exec Dir	Exec Dir
	\$50,000 - \$100,000	Non-Competitive (Optional) Select Consultant	Personal Services	Negotiated	Exec Dir	Exec Dir	Exec Dir	Exec Dir
	Over \$100,000	Formal Advertise	Personal Services	Negotiated	Commission	Commission	Exec Dir	Exec Dir or Commission
Professional Services (A&E)	\$5,000 or Less	Non-Competitive Use A&E Roster	PO	Negotiated	Proj Mgr	Proj Mgr	Proj Mgr	Proj Mgr
	\$5,001 - \$49,999	Non-Competitive (Optional) Use A&E Roster	Professional Services	Negotiated	Exec Dir	Exec Dir	Exec Dir	Exec Dir
	Over \$100,000	Formal Advertise	Professional Services	Negotiated	Commission	Commission	Exec Dir	Exec Dir or Commission
Purchased Services (Vendor)	\$1,000 or Less	Non-Competitive Select Vendor	PO	Quote	Proj Mgr	Proj Mgr	Proj Mgr	Proj Mgr
	\$1,001 - \$5,000	3 Verbal Quotes Documented Select Vendors	PO or Purchased Services	Low Bid	Proj Mgr	Proj Mgr	Proj Mgr	Proj Mgr
	\$5,001 - \$25,000	3 Written Quotes Select Vendors	PO or Purchased Services	Low Bid	Exec Dir	Exec Dir	Exec Dir	Exec Dir
	\$25,001 - \$100,000	Request for Bids Select Vendors or Advertise	Purchased Services	Low Bid	Exec Dir	Exec Dir	Exec Dir	Exec Dir
	Over \$100,000	Formal Advertise	Purchased Services	Low Bid	Commission	Commission	Exec Dir	Exec Dir or Commission

MANAGEMENT OF PERSONAL SERVICE CONTRACTS – Cont'd

Type of Contract	Dollar Amount of Contract	Solicitation Process	Type of Contract	Contract Price	Authorization to Solicit	Awards Contract	Signs Contract	Approves Change Orders
Equipment or Materials	\$1,000 or Less	Non-Competitive Select Vendor	PO	Quote	Auth Agent	Auth Agent	Auth Agent	Auth Agent
	\$1,001 - \$5,000	Verbal Quotes Select Vendors	PO	Low Bid	Auth Agent	Auth Agent	Auth Agent	Auth Agent
	\$5,001 - \$25,000	Written Quotes Select Vendors	PO	Low Bid	Exec Dir/ Auth Agent	Exec Dir/ Auth Agent	Auth Agent	Auth Agent
	\$25,001 - \$100,000	Request for Bids Select Vendors or Advertise	PO	Low Bid	Exec Dir/ Auth Agent	Exec Dir/ Auth Agent	Exec Dir/ Auth Agent	Auth Agent
	Over \$100,000	Formal Advertise	PO or Contract	Low Bid	Commission	Commission	Exec Dir	Auth Agent
Public Works Projects	\$100,000 or Less	Request for Bids Use SPW Roster Process	Small Public Works	Low Bid	Exec Dir	Exec Dir	Exec Dir	Exec Dir
	Over \$100,000	Formal Advertise	Public Works	Low Bid	Exec Dir	Commission	Exec Dir	Exec Dir or Commission
	Exception \$100,001 - \$200,000	Use SPW Roster Process w/Commission Approval	Small Public Works	Low Bid	Commission	Commission	Exec Dir	Exec Dir or Commission
	Emergencies	Select Available Contractor	SPW or PW	Quote	Exec Dir	Exec Dir Notify Com Com Ratifies	Exec Dir	Exec Dir