

Procedure: Contracts-Services Rendered to ESD (AP)

Contracts should be executed when ESD is receiving services which are defined by mutual agreement of ESD and the contractor/vendor (personal services) that are not from a vendor's menu of services offered (purchased services) or are of a nature as to present potential for financial harm if damages occur (most typically information technology services).

Purchased Services Definition: Services provided from a "standard" menu of services available from a vendor operating and reporting as a private business. Such contractors/consultants are generally not doing business as individuals, although they may be individuals operating a professional corporation. Examples: Technology vendors, professional services such as actuaries and attorneys, utility companies, etc. Purchased services may not require a contractual agreement unless substantial risk is involved with the outcome of service delivery or the services to be rendered require documented understandings.

Personal Services Definition: Professional or technical expertise provided by an individual consultant or professional corporation to accomplish a specific study, project, task or other work statement, mutually agreed to by the contractor and ESD. Contractors/consultants may be individuals or employees of a business. If an individual, ESD must establish that the individual is properly classified as an independent contractor for the work to be performed. See discussion below under "Contractor Status Determination".

Contractual agreements entered into for services rendered may be vendor agreements for purchased services, interlocal agreements (other governmental entities) or personal service agreements.

Annually, assigned staff shall draft, and obtain approval of, standardized templates of interlocal and personal service agreements for services to be rendered to ESD. Agreement templates shall include "General Terms and Conditions" which shall remain unaltered for all agreements issued. Adjustments to General Terms may be considered at the request of the contractor, but should be an exception consideration. Significant changes may require review by ESD legal staff or an outside attorney. Any approved adjustments shall be recorded in the scope of services to be provided as an amendment to the General Terms cited.

When executing contracts presented by a vendor for purchased services or an interlocal agency, terms and conditions should be carefully reviewed by Business Services, technical staff (in the case of technology contracts for example), and/or legal staff to ensure that all terms and conditions are acceptable and reasonable. When contracting with a contractor/consultant for personal services, ESD contract forms should generally be used. [6210-R5 Contract Clause Checklist](#) may be used as a tool to evaluate the adequacy and/or completeness of the vendor contract offered. Contracts meeting the following criteria should be reviewed by ESD legal staff before execution:

- Vendor contract with insufficient terms or terms conflicting with ESD requirements
- Vendor template contract where ESD is going to pay >\$25,000
- Where scope of services may result in creation of materials or technology that may be intellectual property that ESD may wish to control
- Real property is being leased, purchased or used

If services do not involve any contact with children AND the expected cost of the services is seven hundred fifty dollars (\$750) or less, a purchase order may be used without a formal contract for services. Any expected deliverables and key dates should be clearly indicated on the purchase order.

Department staff shall work together with their assigned budget analysts to draft contracts for services, clearly identify the terms for scopes of services to be offered, which shall be reviewed and approved by assigned Business Services staff or their designee before distribution to the contractor for execution.

Contractors shall execute agreements as the first signature when initiated by ESD, which shall then be countersigned for completed execution by the Superintendent or his/her designee.

Contractor Status Determination

If an individual is providing services for ESD, ESD must establish that the individual is properly classified as an independent contractor for the work to be performed. ESD shall adhere to regulations of the Internal Revenue Service related to procuring services from independent contractors. A personal services contract cannot be issued if it creates an employee / employer relationship. An employee / employer relationship exists when the ESD has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work, but also *as to the details and means by which that result is accomplished*. If the individual is subject to detail direction, an employer relationship is established and the work must be executed on that basis.

In order for ESD to do business with an individual as a services contractor, the individual must meet all of the following criteria:

1. The individual has independently established a business, which is of the same nature as that involved in the pending contract, provides services to the general public and ESD does not exercise control over the individual or their business.
2. ESD does not regularly furnish the individual with tools and supplies, provide general training, require attendance at general staff meetings or provide a regular place to work (e.g. desk, office, phone, computer).
3. The individual maintains financial records for the business and files a schedule of expenses with the Internal Revenue Service for the type of business conducted.
4. There is no continuing relationship between the individual and ESD beyond the scope of the contracted work. Payment for work performed is subject to satisfactory performance and acceptance of services contracted and performed.
5. If the individual operates their business in the state of Washington, the individual has established an account with the Washington Department of Revenue and received a unified business identifier (UBI) or has met the identified exceptions for operating without a UBI as a business in the state of Washington.

Contractor certifications regarding satisfaction of these criteria should be documented on [Form 6210-F3 Independent Contractor Test & Certifications](#).

If the individual is currently employed by ESD as a regular or temporary employee, they would generally not be able to meet the criteria above unless the contracted work was substantially different in nature than the work employed for. Further if ESD has terminated employment of the individual, a contractual relationship cannot be immediately established. The general guideline is a period of at least 180 days must pass before establishing a contractual relationship with a former employee.

If a personal services contract cannot be issued as the individual does not meet all of the independent contractor tests noted above, the individual may be hired on a temporary basis; such arrangements should be discussed with Human Resources for proper salary/wage placement and hiring procedures.

Subrecipient Contracts

ESD may contract for services as a pass-through of Federal award funding to a partner agency or contractor. Subrecipient status differs from a vendor status based on evaluation of certain criteria of the underlying nature of the contractual relationship. Subrecipient contracts further have very specific requirements under federal requirements as documented in 2 CFR Part 200.330. Refer to [6210-P5 Subrecipient Contracts](#) for further information and guidance.

Contract Development and Distribution Processes

- I. The need for a contract is identified by department or budget staff based on the nature of services to be rendered.
 - a. Contract preparation should begin well enough in advance of the date of service to allow for adequate time to work through all review processes and signature execution before services begin.
 - b. The scope of services to be provided is vetted for purposes of determining contractor selection criteria, if required.
 - i. If the service is to be provided through interlocal agreement, step II below may be omitted; interlocal agreements are not subject to purchasing thresholds procedures.
 - ii. If the service is for a self-funding activity such as a fee workshop offering, selection criteria may be waived and step II below may be omitted..
 - c. Contractor selection processes, if required, are executed and documented—refer to [Board Policy 6211 Purchasing: Procurement](#) and related procedures.

- II. The department conducts selection research and obtains quotes on the scopes identified
 - a. Results of contractor quote comparisons should be documented on [6211-F1 Vendor Selection Criteria](#). A minimum of three (3) price comparisons should be obtained.
 - b. If the contractor is determined to be a sole source provider, that determination should be documented on [6211-F2 Sole Source Documentation](#). Also refer to [6211-P1 Procuring Goods & Services](#) for guidelines regarding “sole source provider”.
 - c. If the estimated cost of the services rendered exceeds current bid thresholds (see [6211-P1 Procuring Goods & Services](#)), the service request shall be issued as a formal bid process unless bid exception criteria applies. Department staff should contact Business Services for coordination of a formal bid. Refer to [6211-P2 Bid Requirements](#).
 - d. Contractor’s status should be verified before drafting a contract by obtaining tax and Unified Business Indicator (UBI) numbers or by using [Form 6210-F3 Independent Contractor Test & Certifications](#).
 - e. The Contractor is required to represent whether they have participated in the Washington employees’ retirement system (DRS).
 - f. As best practice, debarment status should be verified before contract is made; debarment clauses are a representation in the agreement terms but it is recommended that when practicable, budget staff verify that status during the selection phase.

- III. Once vendor selection is made, the department, together with budget staff, draft a service contractual agreement, which has clear and specific direction regarding the scope of services to be provided, expected outcomes and deliverables, timelines and financial terms.
 - a. Contract scopes should be consistent with key selection criteria identified during price/service quality comparisons in step II above.
 - b. Departments and budget staff may wish to use [Form 6210-F2 Contract Request Form](#) as a tool to aid in the contract drafting process.
 - c. Total contract amounts must include the total of all payments to be made under the contract, including reimbursable expenses, if any. Payment dates should be consistent with those included in the general terms and provisions or the published accounts payable schedule published by Business Services.

- d. Drafts of scopes and contract should be reviewed with the contractor before sending to Business Services for review.
 - e. Ensure that all paperwork has been received from the contractor: W-9, UBI#, fingerprinting records, if applicable.
- IV. Contract drafts are forwarded to Business Services for review using approved contract templates.
- a. Business Services review considers completeness of terms documented.
 - i. For example, is it clear what services are to be delivered and how and what the expected outcomes of the agreement are?
 - ii. Are expectations of both parties to the agreement included? What is expected of ESD for successful delivery of services?
 - iii. Are timelines sufficiently defined?
 - iv. Are financial and billing terms clearly identified?
 - v. Are terms consistent throughout the agreement?
 - vi. Are all elements of the agreement completed?
 - vii. Has an appropriate signor been identified?
 - b. A second review may be requested if edits or review questions were substantial in nature.
- V. Completed agreements are sent by Business Services to the contractor or interlocal agency for their final review and signature as an unalterable pdf through an electronic workflow system. Signed contracts are routed to the Superintendent for his/her counter signature and full contract execution. Any alterations indicated by the contractor must be reviewed and individually initialed if accepted.
- VI. Purchase Order requisition is executed for completed contracts.
- a. The Purchase Order number shall be the assigned contract number.
 - b. Attach supporting contract documentation (step V.b. above).
 - c. W-9s should be given to Business Services--Accounts Payable to attach to the vendor file. (Once a PO has been obtained for the year, a new one is not required for each PO/contract.)
- VII. Department and budget staff monitor contract performance and execute payments for services rendered (refer to [6215-P1 Accounts Payable](#)).

Managing the Contract

Departments together with their assigned budget staff should assign responsibility for monitoring contract performance, both service delivery and fiscal status.

Any significant change to an executed contract should be requested and mutually agreed prior to the end date of the contract; changes to an executed contract would be executed through a contract amendment, with form appropriate to the underlying contract. If changes such as extensions to work are identified after the contact term has ended, a new contract should be initiated.

*Updated: 7/2018
Formerly contained in Administrative Procedures Section H*