

OGRD Memorandum 22

Subcontracts vs. Personal Services Contracts vs. Purchased Services

WASHINGTON STATE UNIVERSITY

The Office of Research
Office of Grant and Research Development

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SUBJECT: Distinguishing between Subcontracts, Personal Services Contracts, and Purchased Services

The purpose of this memorandum is to outline the differences between a subcontract, personal services contract, and purchase order (purchased services).

Subcontract: An agreement written under the authority of and consistent with the terms of the Prime Award (grant or contract) that transfers a portion of the research or substantive effort to another organization. A subcontract is normally signed by both parties

A subcontract is an appropriate procurement mechanism when:

1. The collaboration is substantive programmatic work which is beyond mere analytical work-for-hire normally conducted by a routine service provider.
2. The collaboration is substantial enough that the collaborating individual or organization **will** participate in preparation of results, publication, presentation or other collaborative participation beyond routine analytical work.
3. The collaborator will maintain control of the work to be performed under the subcontract.

The Office of Grant and Research Development is responsible for preparing, signing and (non-fiscal) managing of subcontracts from sponsored agreements.

Personal Services Contract: A written agreement with an outside contractor to provide professional services and deliverables of an intellectual, creative or professional nature. The work may require specialized knowledge in a particular field, originality, creativity, and decision-making abilities on the part of the contractor. Such services may be required to complete work on a sponsored project or to support specific University projects or goals.

The agreement is a formal contract with scope of work, period of performance, schedule of deliverables, and other standard contract provisions, terms and conditions. A University contract template provides the contract structure and general terms and conditions. In final form the contract is signed by the two contracting parties. A contract manager for the University is named in the contract and is responsible for participating in the contract drafting, overseeing the contractor's performance, receiving deliverables, approving work and reviewing invoices.

If there are collaborative researchers or critical service providers needed in your research work and their selection can be justified and documented; it is recommended that you name those individuals or firms in your grant proposal documentation.

The delegation to sign personal services contracts resides exclusively with Purchasing Services. No contract work is to begin on a personal service contract until the contract is fully executed; meaning signed by the contractor and the Director or Associate Director of Purchasing Services.

A personal services contract is an appropriate procurement mechanism when:

1. The collaboration is **not** substantive programmatic work, however, **is** beyond mere analytical work-for-hire normally conducted by a routine service provider.
2. The collaboration **may or may not be** substantial enough for the collaborating individual or organization to participate in preparation of results, publication, presentation or other collaborative participation beyond the specialized service.
3. The collaborator will work independently and maintain control of the methodology.
4. The contract meets a special University need and is usually professional or technical and normally on a short-term basis.
5. The results may have implications for policy and management-level issues.

All personal service contracts must be processed by the WSU Purchasing Office. If the contract is over \$10,000, the personal services contract must be competitively awarded or sole-source justified. If the contract is over \$10,000, sole source justified and funded 50% or more by state funds; it must be approved by the Director of Purchasing Services prior to the contract being signed. Sole source personal service contracts with 50% or more in state funds must also be posted to Washington's Electronic Business Solutions (WEBS) with evidence of posting provided to the Director of Purchasing Services during the sole source approval process. Contractors on personal service contracts over \$10,000 on non-state funding must either be specifically named in the sponsored agreement or be approved by a sole source justification memorandum. The page from the grant documentation naming the particular contractor can be submitted to the Purchasing Office in lieu of a sole source justification. WSU Purchasing Services can approve well documented and justified sole source personal service contracts on non-state funds or with 50% or more of the funding on non-state funds.

The following discussion outlines the differences between consultants and employees, which is relevant because personal services contracts are with consultants:

The fundamental distinction between employment and consultant relationships is the degree to which a proposed service arrangement will allow control of the work effort, in terms of exactly what will be accomplished, when and how. The Internal Revenue Service bases its enforcement of employers' withholding and reporting obligations on this distinction. It is important to note that such control is deemed to exist for an employee, whether or not it is actually exercised. Merely having the right to exercise such control over the services is sufficient to render the University subject to all responsibilities and liabilities applicable to employment relationships.

Consultants are considered to be in business for themselves, where they stand to realize a profit or suffer a loss as a result of their business activity. The personal services contract is an appropriate, cost-effective way for obtaining their services on the University's behalf.

Exercise extreme care when engaging outside services. The Internal Revenue Service requires withholding and payment of taxes, including Social Security Tax, where any element of an employer/employee relationship exists. Enforcement is strict and the University may be subject to significant penalties, including criminal action, for failing to properly distinguish consultants from employees.

Note: In the case of personal services contracts, Purchasing must receive all documentation **15 days prior** to the contract starting date.

Purchased Services: Are orders to procure goods and services that are normally routine in nature. They are normally signed only by the Purchasing party.

A purchased service is an appropriate procurement mechanism when:

1. The collaboration is **not** substantive programmatic work, but work-for-hire.
2. Services are more routine in nature and follow established procedures. These services deal with day-to-day operations and are repetitive, following standard procedures.
3. The collaboration **is not** substantial enough for the collaborating individual or organization to participate in preparation of results, publication, presentation or other collaborative participation beyond the specialized service.
4. The services are performed under the agency's (University's) direction.

The Purchasing Department is responsible for Personal Services Contracts and all Purchased Services.