

HOUSE BILL REPORT

EHB 1404

As Passed House
March 16, 1993

Title: An act relating to personal service contracts.

Brief Description: Regulating personal service contracts.

Sponsors: Representatives Ogden, Silver, Chandler, Sommers, Fuhrman, Locke, Valle, Ballasiotes, Jones, Roland, Brough, Long, Foreman, Ballard, Wood, Miller, Forner, Tate, Schoesler, Reams, Morton and J. Kohl; by request of Legislative Budget Committee.

Brief History:

Reported by House Committee on:
State Government, March 2, 1993, DP;
Passed House, March 16, 1993, 96-0.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: Do pass. Signed by 9 members: Representatives Anderson, Chair; Veloria, Vice Chair; Reams, Ranking Minority Member; Vance, Assistant Ranking Minority Member; Campbell; Conway; Dyer; King; and Pruitt.

Staff: Bonnie Austin (786-7135).

Background: State agencies are authorized to enter into personal service contracts with consultants to accomplish specific projects, studies, or tasks. A documented, formal competitive solicitation process must be used for most personal service contracts. However, contract amendments and sole source contracts are specifically excluded from the competitive solicitation requirement. Additionally, subcontracts to personal service contracts are not regulated under the state's personal service contract procurement law.

Legislative Budget Committee (LBC) reviews have uncovered abuse of the contract amendment exemption. For instance, in one case a state entity entered into a competitively bid legal services contract for \$70,000 for venture capital advice. The state entity later expanded the contract to \$4 million for general legal services without competitive bidding. Additionally, in the same case the LBC documented the use of subcontracting costs exceeding \$3 million that were not competitively bid.

All sole source contracts for more than \$10,000 must receive prior approval from the Office of Financial Management (OFM). OFM approval is also required if the addition of a new sole source contract puts the total amount received by the contractor from that agency over \$10,000. Agencies are required to submit documented justification when sole source contracts are filed.

There is no central filing requirement for most types of personal service contracts. However, contracts for over \$2,500 which are sole source, emergency, or expert witness contracts must be filed with OFM and the Legislative Budget Committee (LBC). Contracts filed with OFM and the LBC are available for public inspection.

Summary of Bill: Substantial changes in the scope of work specified in either the formal solicitation document or the contract must generally be awarded as new contracts. Personal service contract amendments that exceed 50 percent of the original contract amount must be submitted to the Office of Financial Management (OFM) and the LBC. OFM must approve contract amendments prior to implementation. The amendments must be filed with OFM and made available for public inspection at least 10 working days prior to the proposed starting date of services.

Subcontracts to personal service contracts must be competitively solicited. If subcontracts and subcontractors are specified in the contractor's response to a competitive

solicitation, then the competitive solicitation requirement is met. If not, then subcontracts must be obtained using a documented formal competitive solicitation process and selection of subcontractors is subject to prior agency approval.

A state agency may procure personal services only if it documents that: (1) The service is critical to agency operations or responsibilities, or is mandated or authorized by the Legislature; (2) insufficient staffing or expertise is available within the agency to perform the service; and (3) other qualified public resources are not available to perform the service.

Agency justification for the use of sole source contracts of \$10,000 or more that are state funded must include evidence that an agency attempted to identify potential consultants by advertising or by notifying consultants on established bidders' lists approved by OFM. OFM will approve sole source contracts of \$10,000 or more only if they are state funded. OFM will ensure that the costs negotiated in sole source contracts of \$10,000 or more are reasonable.

State-funded personal service contracts subject to competitive solicitation will be filed with OFM and LBC at least 10 working days prior to the proposed starting date. OFM will review and approve state-funded competitively solicited personal service contracts relating to management consulting, organizational development, marketing, communications, or employee training and recruiting.

OFM is to maintain a list of all personal service contracts entered into by state agencies during each fiscal year. The list is to include for each contract the contracting agency, the contractor, the purpose of the contract, the cost, and whether the contract was competitively procured or awarded on a sole source basis. OFM is to report annually to the fiscal committees of the Legislature on the number and aggregate value of the various types of contracts entered into, the justification provided by agencies for use of sole source contracts, and trends in the use of sole source contracts.

Contracts and contract modifications entered into by any state agency for architectural and engineering services will be reported to OFM on a quarterly basis.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: None.

Testimony Against: None.

Witnesses: None.