



POLICY & PROCEDURE DOCUMENT

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DIVISION: Finance & Administration

TITLE: Personal Services and other Service Contracts

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I. Purpose and Scope

To define contracting authority and procedures for professional, technical, scientific and artistic services.

II. Policy

It is the policy of Western Kentucky University to establish personal service contracts for professional services in accordance with the provisions of KRS 45A.690 – 45A.695. Examples of services that must be provided through a personal service contract include but are not limited to consultants, doctors, employee search firms, nurses, lawyers, engineers and architects.

Commodities, equipment and non-professional services are not to be procured via a personal service contract.

▪ Definitions

Personal service contract is an agreement whereby an individual, firm, partnership, or corporation is to perform certain services requiring professional skill or professional judgment for a specified period of time at a price agreed upon.

Committee means the Government Contract Review Committee of the Legislative Research Commission.

Contracting body means Western Kentucky University.

III. Procedure

Prior to awarding a Personal Services Contract consider whether an individual selected to perform work is an employee or an independent contractor. Also in some cases a sub-contract, Memorandum of Agreement or Performance Contract may be the appropriate contracting instrument instead of a Personal Services Contract.

A. Is this a Personal Services Contract?

1. Employee or Independent Contractor

When considering the establishment of a personal service contract with an individual, the first determination to be made is whether or not the individual should be added to payroll as a temporary employee or if the nature of the services required dictates that the worker is an independent contractor. In order to determine whether an individual shall be an employee or an independent contractor, the relationship of the worker and the university must be examined - all information that provides evidence of the degree of control and the degree of independence must be considered. Facts relating to evidence of control and independence fall into three categories: behavioral control, financial control and the type of relationship of the parties. All departments seeking to establish a personal service contract with an individual must complete the Determination of Contractor Status form available on the Finance and Administration web site. This document must be submitted to the Supply Chain Management at the time the contract is submitted. Please note this determination does not apply when contracting with a firm, partnership or corporation. If work can be performed by an existing University employee and this work is beyond their normal duties, supplemental pay may be requested by filling out and submitting a Form 16.

2. Sub-award or Personal Services Contract

When considering the establishment of a personal service on a sponsored project, first determine whether or not the procurement mechanism should be a sub-award or a personal service contract. The following should help to distinguish between the two processes:

Sub-award: An agreement written under the authority of and consistent with the terms of the Prime Award (grant, contract or cooperative agreement) that transfers a portion of the research or substantive effort to another organization when such expertise is not available within the primary awardee's institution. A sub-award should be identified at the time of proposal to the sponsoring agency and is considered fully executed once it has been signed by both parties. More details can be found on the **Sponsored Programs** website.

A sub-award 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 sub-award.

Responsible Administrative Unit: The Office of Sponsored Programs is responsible for the preparation, signing and non-fiscal management of all sub-awards issued by the University.

3. Memorandum of Agreement or Memorandum of Understanding: A contract for services required that can be furnished by another governmental body or political subdivision of the Commonwealth that involves the exchange of resources or responsibilities. These types of agreements may be used as the contract vehicle between the university and other state agencies as required by federal or state law or non-financial agreements between the university and other state agencies or political sub divisions.

4. Performance Contract: These contracts are used for visiting speakers, expert witnesses, and performing artists. Performance Contracts must be signed by the Chief Financial Officer of the University. Along with the signed contract, a signed and fully completed W-9 form (companies must indicate, sole proprietor, corporation, partnership or other) from the payee, and an on-line requisition are to be submitted to the Supply Chain Management for processing. If payments are to be made to an individual, an approved Determination of Contractor Status form is also required.

5. Personal Service Contract: A written agreement whereby an individual, firm, partnership or corporation is to perform certain services requiring professional skill or professional judgment for an agreed upon price for a specific period of time. The agreement is for a specialized service not available through a routine service provider. The contractor requires a specialized knowledge in a particular field and often requires originality, creativity and decision-making abilities. The agreement is intellectual and professional in nature and is signed by both parties.

A personal service 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 is not substantial enough for the collaborating individual or organization to participate in scientific design, methodology, preparation of results, publication, presentation or other collaborative participation beyond the specialized service. The individual or organization acts as an independent contractor.
3. The collaborator meets a special agency (University) need, is usually professional in nature, and is normally on a short-term basis.

Responsible Administrative Unit: Supply Chain Management is responsible for the processing of all Personal Service Contracts.

B. Procedure Personal Services Contract \$10,000 or Less

The effective date for all Personal services Contracts should be planned to start after the next scheduled Government Contract Review Committee meeting. When a contract for Personal Services with a total cost of \$10,000 or less is required, the department may informally solicit proposals, make the determination of the best qualified contractor and establish a PSC contract. The department shall use and complete the standard Personal Services Contract (\$10,000 or less) document, have the contractor and department sign two original PSC documents and submit the signed documents to Purchasing for processing. The submittal to Purchasing shall include the proposals received and considered and a properly authorized on-line requisition requesting Purchasing finalize the signed contract.

As an alternative, the Department requiring the services may submit an on-line requisition to Supply Chain Management describing the services required. The Purchasing department will solicit competitive proposals, negotiate pricing and contract for the necessary services. If this process is used, Supply Chain Management will communicate with the End User Department for any additional information necessary to complete the process.

In all cases, the Purchasing Department will assign the Personal Services Contract number to the contract and forward the Contractor's copy of the contract to the Contractor. The Purchasing Department will generate a Purchase order authorizing the Contractor to begin work and allowing payments to be processed. Additionally Purchasing will notify the Government Contract Review Committee in Frankfort of the contract.

C. Procedure Personal Services Contract Multiple Contracts \$10,000 or Less

In some cases, departments may have need for one service with multiple vendors. In this case, we can submit one contract form to Frankfort for approval by the Government Contract Review Committee.

D. Procedure Personal Services Contract Exceeding \$10,000

Personal Service Contracts shall be procured and processed in accordance with this policy and KRS 45A.690 - 45A.725.

1. University departments that require services appropriate to be contracted through a Personal Service Contract shall contact Supply Chain Management. This contact shall be made well in advance of the need for the services. The request must be signed by the appropriate Dean/Director, or Vice President and include a description of the services desired, the estimated amount of work involved, the estimated cost per fiscal year, and the department's contact person. The request to contract shall be submitted well in advance of the requested contract effective date as contracting for personal services requires considerable time to complete. Time required to process will vary depending on the service required and specific details of the contracting process. Most contract processing requires at least 60 days to complete.
2. Requests received to contract for legal services, auditing services, or computer services will be submitted by Supply Chain Management to the Office of the University General Counsel and the State Attorney General's Office, the Auditor of Public Accounts, or the Division of Information Technology, respectively, for determination as to whether the services can or should be performed by university or state personnel.
3. The Purchasing Department will review the information submitted to determine the appropriateness of contracting for the needs using the Personal Service Contract method. Supply Chain Management will work with the requesting department to develop a Request for Proposal.
 - a. Pursuant to KRS 45A.695, Supply Chain Management will issue a Request for Proposals to solicit proposals for the services required. The Request for Proposal shall at a minimum describe the services required, list the type of information and data required of each offeror, and state the relative importance of particular qualifications.

- b. Supply Chain Management shall distribute the Request for Proposals and, if the estimated amount of the Personal Service Contract is \$10,000 or more per fiscal year, give adequate public notice of the need for services. Adequate public notice will be provided through the www.wkuplanroom.com web site. The notice will contain a brief description of services requested, estimated amount of work involved, and the name of the person to contact in order to obtain additional information and a copy of the Request for Proposals.
 - c. Upon receipt of responses, the Purchasing Department may conduct discussions with any offeror submitting a proposal to determine the offerors' qualifications for further consideration but such discussions shall not disclose information derived from another offeror's proposal. If discussions are conducted with offerors for purposes other than to secure qualification information, the same discussions must be conducted with all offerors.
 - d. The Director of Supply Chain Management will appoint a proposal evaluation committee from university representatives recommended by the unit requesting the services and others, at the Director's discretion. A representative of Supply Chain Management and the assigned evaluation committee shall review the proposals received and record written determinations of the qualification rankings of the offerors based on the evaluation factors set forth in the Request for Proposals. This written determination shall be maintained by the Purchasing Department as required by KRS 45A.695(5).
 - e. After determining the best qualified of all offerors, Supply Chain Management may negotiate a fair and reasonable compensation with the selected offeror. If compensation cannot be agreed upon with the best qualified offeror, negotiations may be conducted with other offeror(s) in the order of their respective qualification ranking.
 - f. After selecting the contractor, the Purchasing Department shall generate a contract which includes all terms and conditions agreed upon. The contract shall include the sworn statement regarding campaign finance laws required by KRS 45A.110(2) and 45A.115, in addition to the statement required by KRS 45A.485, and the Legislative Research Commission (LRC) Proof of Necessity (PON). The resulting contract shall be signed by both parties, and shall be forwarded to the LRC for their review and approval. Forwarding for appropriate approvals and filing with LRC may be done electronically.
4. Pursuant to KRS 12.210, contracts for legal services shall also be routed to the Office of the Governor for the issuance of an Executive Order, and its filing with the Office of the Secretary of State.
5. Contracts for project specific architectural and engineering services shall be advertised, contracted and managed by Planning Design and Construction in accordance with provisions of KRS 45A.800 - 45A.836. Planning Design and Construction will advertise statements of need for per diem architectural and engineering services and will finalize contracts with all interested parties. Planning Design and Construction will manage the use of these contracts by issuing and controlling assignments for services required by the University.

6. An amendment to a contract shall be processed in the same manner as an original contract. An amendment shall include an extension of a Personal Service Contract, an address change, an increase or decrease to encumbrance, and any other correction or change. Changes in the encumbrance amount shall be made by an Advice of Change, approved by the requesting Department and the Purchasing Department. An Advice of Change may be routed electronically.
7. If requested the Senior Vice President for Finance and Administration or the designated representative, shall represent the University at meetings of the Government Contract Review Committee. No work, as described in the Personal Service Contract, may begin until the Legislative Research Commission has officially received the proposed contract.
8. Supply Chain Management shall notify each unit when work may begin on a Personal Service Contract (when the contract has been received by the Legislative Research Commission). Supply Chain Management shall notify each unit when the Government Contract Review Committee has rejected the contract. Once the Committee has approved a contract, the University may make payments for services under the contract.

(KRS 45A.690 - KRS 45A.725)

[Finance and Administration Forms – Purchasing Forms](#)