

# 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 that transfers 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 normally signed by both parties.

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 agency (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.

Personal services contracts over \$2,500 on state funding must be filed with the Office of Financial Management Olympia (OFM). If the contract is over \$10,000, the personal services contract must be competitively awarded or sole-source justified. Both of these processes include advertising and receiving approval from OFM before any work commences on the contract. Personal services contracts over \$2,500 on non-state funding must either be specifically named in the sponsored agreement or be accompanied by a sole source justification memorandum. Please refer to Business Policies and Procedures Manual 70.50 for further discussion on personal services contracts.

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.