

EXTENSION G & C OFFICE
CORRESPONDENCE/MEMORANDUM

STATE OF WISCONSIN

Date: May 31, 1977

File Ref:

To: Bill Vance, Associate Director
UW Research Administration-Financial

RECEIVED

JUN 1 1977

From: Dan Caucutt, Management Analyst
Department of Administration

RESEARCH ADMINISTRATION
FINANCIAL

Subject: Application of the Agreed-Upon Indirect Cost Factor in Interagency Agreements

You called today to ask my opinion on administrative handling of agreements between Department of Administration and departments of the UW System. Specifically, you raised the matter of occasions where an individual of DOA may approach a faculty researcher to develop a proposal to study an area of mutual interest; part of the professor's proposal would be a budget, which depending on the source of project funding (state or federal) would not, or would, have to include the agreed-upon 15% indirect cost factor. The circumstance may arise where the DOA person does not know what the source of funding will be before the research proposal and budget are developed. The question then becomes, should the professor include or not include the indirect cost rate.

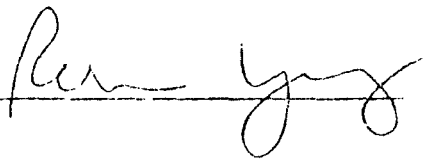
All options considered, it is my opinion that the research proposal should include the overhead factor where source of funding is uncertain; it should be clearly itemized as application of the 15% against direct costs, thus lending itself to removal when/if it is determined prior to drafting of the agreement that the funding source is state General Purpose Revenue.

If DOA staff are following the newly-released Internal Operating Procedure (copy attached) for DOA personal services contracting, they should know that the Secretary's Office must be informed of the agreement prior to drafting the actual interagency agreement (except in some cases where the dollar amount involved is less than \$ 3,000, in which case they may also get Provider Agency signature on the agreement itself prior to Secretarial review and final approval in concept); part of the information that must be given in the Proposal to Contract to the Secretary is source of funding. Putting it differently, I believe that in most cases the DOA staff person will have secured needed information on source of funding before the UW researcher draws up the abstract and budget; if this assumption is correct, either a letter from the DOA contact to the faculty member, or a copy of the approved Proposal to Contract, should be adequate documentation to exclude the indirect cost factor (where source of funding is GPR) from the research proposal.

Summing it up, I appreciate the need you have for a consistent administrative policy on applying overhead factors, and recommend that you include it in research proposals to DOA unless DOA has provided UW with a statement that source of funding will be GPR. DOA would be drafting the agreement proper and can clear up discrepancies at that time, before getting your (Board of Regent) signoff on the document.

cc: Barbara Coleman, Administrator, Administrative Services Division
Craig Adams, Office of Planning & Energy

DEPARTMENT OF ADMINISTRATION ► INTERNAL OPERATING PROCEDURES

Approved by 

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No. 206

Date: MAY 1977

SUBJECT: PERSONAL SERVICES CONTRACTING

POLICY

Contracts for personal services with private sector firms or individuals are appropriate where existing staff lack a desired expertise, or are otherwise unable to provide a necessary service in timely enough fashion. Duties which are performed as part of the ongoing business of an agency ordinarily are not to be the subject of contracts.

Maximum use should be made of talent available within state government either through temporary exchange of staff, or interagency cooperative agreement.

Where outside consultant services are required, departmental vendor selection procedures should promote competition to the maximum extent that market and time conditions permit.

Contracts for personal services must be related to departmental objectives and statutory responsibilities.

This operating procedure guiding personal services contracting is intended to standardize the preparation and processing of agreements with other state agencies or private individuals and companies. Information which is requested on the Proposal to Contract document (Attachment A) incorporates requirements for procurement issued by the State Purchasing Office and provides the Secretary's Office with more data for informed decision making. It allows policy-level review and the opportunity to express concerns prior to substantial staff time commitment in selection and contract negotiations.

Where a number of contracts or agreements connected with the same project are anticipated, only one Proposal to Contract may be needed. Similarly, where the amount of money involved is small (less than \$3,000) or where the intended vendor is another state agency, the operating procedure is abbreviated.

PROCEDURE

A. Outline the Operating Procedure

Preparing and executing a contract involves up to six parties from the time the need for contractual personal services is identified until final signature creating a valid agreement. To facilitate planning, the key milestones or steps are outlined, along with indication of who is involved. Each step is elaborated upon in the succeeding sections.

1. Division/Bureau prepares "Proposal to Contract" form available in the Administrative Services Division (ASD) and submits to ASD, which reviews financial and procurement implications. If the amount involved is less than \$3,000, skip to step (4).
2. Secretary's Office reviews and approves the proposal, returning the document directly to the project manager, if the proposal is acceptable, or to ASD if further administrative information or clarification is required.
3. Division/Bureau selects the vendor along lines outlined in this procedure, and State Purchasing Information Bulletins, if required.
4. Division/Bureau drafts the contract or interagency agreement and obtains the vendor/consultant signature. The 'model' formats appended to this procedure should be followed.
5. Division/Bureau submits the approved Proposal to Contract along with the agreement (in duplicate if an original is needed by the bureau) to ASD.
6. ASD issues a purchase requisition and Request for Purchasing Authority to State Purchasing, if the contract is with a private vendor and amounts to \$3,000 or more; where the amount is less than \$3,000, the package goes directly to the Secretary's Office. Similarly, where the service provider is another agency of government, materials go directly to the Secretary.

Where contracts are with private sector vendors, and are \$10,000 or more in amount, waiver of sealed bid by the Governor will be required in most cases. State Purchasing requires a letter requesting waiver which explains why the official sealed bid process was not appropriate, and what the scope of competition was in selecting the proposed vendor.

7. ASD receives the approved package from State Purchasing and forwards to the Secretary's Office. Signature there creates a valid contract, which then is returned to ASD.
8. ASD returns a copy of the signed contract to the project manager and sends purchase order to vendor/consultant.

Preparing the Proposal to Contract

The Proposal to Contract (see Attachment A) should be completed when sufficient information is known to satisfy the minimum requirements outlined therein.

- 1: Statement of need and justification should include reference to any earlier efforts or contracts in support of the same objectives or projects. Also, where Executive or departmental priorities related to the subject of contract can be demonstrated, they should be included.

2. Nature of service required should describe the eventual product which will evidence satisfactory completion of agreement terms. In some instances it may be necessary to explain why existing staff are not capable or qualified to do the job, or what time constraints are in effect to justify contracting.
3. Desired beginning and completion dates should be realistic in allowing for adequate lead time for competitive procurement if the circumstances indicate. Ordinarily, personal services contracts should not exceed one year in duration.
4. Department staff involvement should specify the project manager or liaison at the top of the Proposal form, as well as persons in other divisions of the department, or other agencies.
5. Funding details should include the estimate contract costs, the appropriation and project accounting codes (if established), the name of the federal agency (including Act title) or other grantor organization, and any future requirements for additional agreements of related nature or supplemental state or federal funding. Federal grants commonly require advance authorization in writing for subgranting or subcontracting, and a statement that this has been secured must be present, if appropriate to the source of funding.
6. Availability of vendors or consultants should receive preliminary exploration during the proposal preparation phase. It is the department's policy to encourage the widest competition that market conditions permit, and the burden rests on the division or bureau to demonstrate that the degree and rigor of open competition proposed (or not proposed) reflects an adequate assessment of potential vendors.

Where sole source procurement (zero competition) is contemplated from the onset, the project manager should be prepared to justify to the Secretary and State Purchasing that it is warranted; if the amount is \$10,000 or more in a contract with a private sector concern, the justification will extend to the Governor's Office for waiver of sealed bid statutory requirements.

C. Review of Proposal to Contract by Administrative Services Division

The completed proposal to contract should be sent to the Chief, Budget and Management Analysis in ASD, who will determine the scope of review needed and involvement of ASD staff. Each proposal will be logged in and tracked through the process until final disposition. Ordinarily, the review by ASD will be to confirm availability of funding with respect to the approved operating budgets or grants, and cross-check any corollary agreements which may be of interest to the Secretary's Office. The Proposal will be forwarded to the Secretary or State Purchasing within one day of receipt, or the project manager will be notified of complications and involved in their resolution.

Where the proposed contract amount is \$3,000 or less, the division or bureau may submit the contract, signed by the vendor, along with the Proposal. Similarly, where the contract is an interagency agreement in which negotiations have had to take place to get the information required in the Proposal to Contract, and at the same time constitute adequate substance for the 'model' agreement format, the actual agreement may also be prepared with provider agency signature and included with the Proposal.

D. Approval of Proposal by Secretary's Office

Questions which the Secretary or Deputy Secretary may have concerning program or policy aspects of the proposed contract may be directed from that office to the Project Manager indicated on the form, or to division/bureau management.

Approval of proposal is signaled by the document being sent back to the project manager directly from the Secretary's Office, with a feedback slip or note to ASD for tracking purposes. At the option of the Secretary's Office, problems requiring more detailed research may be directed to ASD or the bureau; in any case, the liaison person will be apprised of developments and progress.

E. Selection of Vendors/Consultants

The degree to which open competition is expected will vary according to (a) whether the intended service provider is another unit of government; (b) the dollar size of the contract; and (c) the consensus regarding lack of demonstrable competition.

Where another agency or unit of government is the proposed provider, no competition is necessary to satisfy state procurement policy; this is true regardless of dollar amount.

Where private sector organizations are the intended consultant, the following procedures apply:

1. Contracts under \$3,000 may be executed directly by the agency Secretary and do not require approval of State Purchasing or the Governor.
2. Contracts of \$3,000 to \$9,999 to not require gubernatorial waiver, but rather are subject to review and approval by State Purchasing. Multiple vendor consideration is expected where circumstances suggest.
3. Contracts of \$10,000 or more are subject to waiver of sealed bid procedures by law, if official sealed bids are not feasible due to the nature of the service desired. Project managers should expect to request proposals from multiple vendors where Department of Administration agreements involve \$10,000 or more, regardless of funding source. Development of a request for vendor proposal, issuance of the RFP and subsequent proposal evaluation and selection are responsibilities of the contracting division. Assistance in identifying vendors, or preparing waiver requests is available from the Administrative Services Division.

Preparation of the Waiver of Sealed Bid Request

As indicated above, where the official sealed bid procurement process is not followed in acquiring services, which will be the case in many of this agency's personal services contracts, Wisconsin law requires that the Governor sign a release on each such contract. Agencies in general, and project managers in particular, should prepare a letter to State Purchasing which establishes 'lack of responsible competition and/or justification for purchase' (State Purchasing Procedures Policy Bulletin P-500-1).

Criteria established by State Purchasing for demonstrating 'lack of responsible competition,' which waiver letter should address, are the following:

1. Uniqueness: Where a product or service can be easily established as a one-of-a kind.
2. Patent or Proprietary Rights: A patented feature gives the state a superior utility which cannot be obtained from similar products or services; or, a product or service is available from only one prime source.
3. Non-Specifiable: A description of the service cannot be reduced to a written specification usable to solicit formal statutory competition.

The State Purchasing Office would like to receive whatever background information which is available relating to the project or service.

Letters of transmittal requesting State Purchasing to consider waiver of bidding should include the following elements:

1. "Full Explanation" of the service or article required, and why it is necessary and/or desirable to purchase in the best interests of the State of Wisconsin.
2. "Justification" for the waiver of bidding through the demonstrable lack of responsible competition.
3. A review of the selective process used to choose the proposed consultant, particularly when judgement has been largely subjective, and an indication that the process has been applied specifically to the current request, and is not a carry-over judgement from some previous transaction.

Time. Agencies are advised to have their requests on file with State Purchasing at least eight weeks before final commitment and waiver is complete.

The Administrative Services Division will assist project managers in approaching the above state-wide requirements, if requested.

Preparation of Contract

Personal services ordinarily are obtained, contractually, through use of a standard format contract or interagency cooperative agreement (copies attached). Both have clauses which should be present regardless of the kind of service

desired. The interagency agreement, attached, is presented with the University of Wisconsin Board of Regents as the service provider; substitution of agency names for the University would make it applicable for agreements between any agencies.

1. Contracts with private sector vendor/consultants should follow GENERAL clauses under Section I of the "model" (Attachment B), with no variation.

SCOPE OF SERVICES under Section II should clearly in precise terms describe all expectations of what and how services are to be provided, with indicated deadlines and required products.

TIME, COST AND ADMINISTRATION in Section III should include the clauses indicated, with detailed budget description provided under paragraph (b); the rate at which professional services are to be billed to the department must be stated, with \$(X) per hour or day being the preferred basis.

Signature of the vendor/consultant should be obtained, with any exceptions to GENERAL and TIME, COST AND ADMINISTRATION clauses being resolved in advance with input from the Administrative Division. The Chief, Budget and Management Analysis Section, in ASD is the contact for addressing questions arising in completing sections of the contract, unless otherwise indicated.

The signed contract should be presented to ASD, along with the approved Proposal to Contract and transmittal letter requesting waiver of sealed bid, if applicable (cf. Section G).

2. Cooperative agreements with other state agencies should follow that "model" (Attachment C). Where the University of Wisconsin is the provider, inclusion of an indirect cost factor equal to fifteen percent (15%) of direct costs should be present in only those agreements where a source of funding is a categorical (fixed amount of formula) federal grant; no indirect cost factor should be paid to agencies other than the UW. Where a bureau of the Department of Administration fully intends to have the UW as a subcontractor or subgrantee in completing work under a federal grant, and has such intention from the earliest conceptual stages, the UW Research Administration - Financial staff should be involved in preparing the actual grant request or application. The reason is that the UW System has obtained an approved indirect cost rate from the U.S. Department of Health, Education and Welfare, which greatly exceeds the 15% factor which the Department of Administration has negotiated with the University, which it may recover in the original grant. Where source of funding of a Department of Administration--University of Wisconsin cooperative agreement is general purpose revenue (GPR), no indirect cost rate need be added in.

If an article of the standard cooperative agreement or contract is deemed by the project manager to be inappropriate to the service required, the Chief, Budget and Management Analysis Section of the Administrative Services Division should be notified before dropping or modifying the article or clause; failure to do so will delay processing time.

Bureau Project Managers may negotiate directly with the key staff of the provider agency or consultant on scope of services and budget detail. Signature of the agency Secretary, Director of Research Administration for the UW Board of Regents, or the consulting firm's principal may be obtained, with the signed copies then being submitted to the Administrative Services Division, with other materials as described above.

I. Obtaining Contracting Authority

As described in previous sections, where contracts with private sector vendor/consultants are \$3,000 or more in amount, each agency must obtain authority to purchase the personal services from the State Purchasing Office (where official sealed bid has not been the method of selection). The Administrative Services Division will complete a Request for Purchasing Authority document to accompany the contract, as well as a purchase requisition. These will be forwarded along with the letter of transmittal (Section G) to State Purchasing.

Where amounts of \$3,000 to \$9,999 are involved, State Purchasing will evaluate the package and return the approved contract to ASD, which then will obtain Secretary signature and issue a purchase order to the vendor-consultant signifying a valid contract. Signed copies of the purchase order and contract will be returned to the project manager.

Where amounts of \$10,000 or more are involved, State Purchasing will negotiate waiver of sealed bid with the Governor's Office. When waiver is obtained (up to eight weeks later), purchasing authority is granted and the contract is returned to ASD, which then obtains Secretary signature and completes purchase order. Signed copies are returned to the project manager.

Legally, a contract may specify a date for beginning professional services which precedes the date of final party signature, however, there is no valid contract, and therefore no basis for billing, until all required signatures are obtained. No invoices or bills from vendors will be processed if the effect will be to exceed the contract amount; prior written amendment to the contract must be obtained.

II. Contract Amendments

Where Scope of Services or Time, Cost and Administration sections of an original, valid contract need be redefined--to increase the amount of the contract, extend the deadlines, etc.--the amendment procedures are similar to those for the original. The Proposal to Contract should be prepared for the Secretary's Office, and the vendor-signed contract and transmittal letter to State Purchasing, may all be submitted to the Administrative Services Division together. An abbreviated contract format may be used, one which states that "All General clauses (and others, if not affected by the amendment) shall remain in effect, with the following amendments." Assistance in tailoring the original contract may be obtained from the Chief, Budget and Management Analysis, of the Administrative Services Division.

ATTACHMENT A
DEPARTMENT OF ADMINISTRATION
PROPOSAL TO CONTRACT

Division: _____ Secretary
Review: /s/ _____
Bureau: _____
/dd./ _____
Section or Program: _____
Proposal No. _____
Project Mgr. or Liaison: _____
Room & Phone: _____

- I. Statement of Need and Justification: Objectives, statutory mandate, contractual obligations (to Federal agencies or others).

Nature of Service Required

Desired Beginning and Completion Dates

Department Staff Involvement

II. Funding Details

Estimated Contract Costs: \$

Source of Funding: Appropriation, Project

Future Funding Requirements:

III. Availability of Vendors

Potential Vendors or Consultants:

Justification for Sole Source Procurement, if only one vendor is proposed,
(attach additional correspondence as needed).

IV. Division/Bureau Recommendations to Secretary; Administrative Services Comments

ATTACHMENT B

CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this XX day of (Month), (Year) by and between the State of Wisconsin, hereinafter called the "State," represented by its Department of Administration, hereinafter called the "Department" and (Recipient), hereinafter called the "Consultant."

WHEREAS, the Department deems it advisable to engage the professional services of the Consultant, and it appears that such services can be performed more economically under a contract;

WHEREAS, the Consultant has signified willingness to provide professional services to the Department;

NOW, THEREFORE, in consideration of the premises and of their mutual and dependent agreements, the parties hereto agree as set forth in the following pages which are annexed and made a part hereof (pages 1 to XX inclusive).

This contract is complete and valid as of the above date [contingent upon approval of purchasing authority by the State Purchasing Office], or [contingent upon waiver of sealed bids by the Governor]. *Include material in first paren where contract amount is \$3,000 to \$9,000; include second paren when \$10,000 or more. Exclude both when contract amount is less than \$3,000.*

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION

By _____ Date _____
Secretary

By _____ Date _____
(Consultant's Name)

I. GENERAL

A. The Consultant will provide the services hereinafter set forth in accordance with the best professional standards.

B. Subletting or Assignment of Agreement. The Consultant will not sublet or assign all or any part of the work under this agreement without prior written approval of the Department.

C. Employment. The Consultant will not engage the services of any person or persons now employed by the State, including any department, commission or board thereof, without the written consent of the employer of such person or persons and of the Department.

D. Nondiscrimination in Employment. Chapter 16.765 of the Wisconsin Statutes requires the following provision to be included in every contract executed by agencies of the State. The Consultant agrees to the provisions as stated below:

In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5) or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor further agrees to take affirmative action to ensure equal employment opportunities for persons with disabilities. The contractor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

E. Legal Relations. (1) The Consultant will at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct.

(2) In carrying out any provisions of this agreement or in exercising any power or authority granted to the Consultant thereby, there will be no personal liability upon the Department, it being understood that in such matters the Department acts as agent and representative of the State.

(3) The Consultant will indemnify and save harmless the State and all of its officers, agents and employees from all suits, actions or claims of any character brought for or on account of any injuries or damages received by any persons or property resulting from the operations of the Consultant, or of any of its contractors, in prosecuting work under this agreement.

F. Review. Liaison with the Department will be through (Name) who will represent the Department's interest in coordinating the Consultant's provision of services as outlined in the contract.

G. Termination of Agreement. The Department may terminate this agreement at any time at its sole discretion by delivering (X) days written notice to the Consultant. Upon termination, the Department's liability will be limited to the pro rata cost of the services performed as of the date of termination plus expenses incurred with the prior written approval of the Department. In the event that the Consultant terminates this agreement, for any reason whatsoever, it will refund to the Department within 48 hours of said termination, all payment made hereunder by the Department to the Consultant for work not completed or not accepted by the Department. Such termination will require written notice to that effect to be delivered by the Consultant to the Department not less than (X) days prior to said termination.

H. Arbitration. Disputes regarding quality, quantity, and timeliness will be subject to arbitration as provided in Chapter 298, Wisconsin Statutes.

I. All material produced under this agreement shall remain property of the State. Use of same by the Consultant shall be only with the advance written permission of the Department.

J. Right to Publish. The Consultant will be allowed to write and have such writing published provided the Consultant has written approval from the Department before publishing writings on subjects associated with the work under this contract.

K. Examination of Records. The Consultant agrees that the Department,

(AND ANY OTHER STATE OR FEDERAL AGENCIES)

will have access to and the right to examine, audit, excerpt and transcribe any directly pertinent books, documents, papers and records of the Consultant, involving transactions relating to this contract. Such material will be retained for three years by the Consultant following completion of the contract.

L. Continuance of Contract. As required by Wisconsin State Statutes, this agreement must include the following provision: Continuance of this contract beyond the limits of funds available shall be contingent upon appropriation of the necessary funds, and the termination of this contract by lack of appropriations shall be without penalty.

II. SCOPE OF SERVICES

(Include here all products, services, reports and their deadlines expected of the Consultant. All understandings of what support the Department will commit to the project should be clearly stated. Any matters regarding the future use of by-products of the contract should be clarified. Staff to be assigned by the Consultant should be enumerated by name if important to the agreement. Copies of proposals may be appended to the contract and become a part of it.)

III. TIME, COST AND ADMINISTRATION

a. The total cost of this agreement is not to exceed \$XXX for the period (from - to). Costs in excess of this maximum will not be reimbursed unless there is prior, written amendment to this agreement.

b. Payment will be made on the basis of invoices received which itemize categories of expenses actually incurred, including professional fees at stated rates, travel and other direct costs (itemize here, if appropriate). Payment for air travel will be for tourist class only. Frequency of billing will be monthly, or a longer period of time.

c. Final invoice will be submitted to the Department not later than 60 days following close of the agreement. The final fifteen (15) percent of the cost of this agreement will be withheld pending acceptance by the Department of the services and/or materials provided.

(Include here, also, reference to any federal documents or financial requirements which control the engagement.)