



WASHINGTON STATE ADMINISTRATIVE OFFICE OF THE COURTS

CONTRACT AND PROCUREMENT POLICIES

I. OVERVIEW, AUTHORITY AND PRINCIPLES

Judicial Branch Entities (JBEs) procure goods and services to address a JBE's needs, to resolve problems or issues, or to expedite specific projects. This document prescribes the policies for the procurement and contracting related activities of the State of Washington Administrative Office of the Courts (AOC), a Judicial Branch Entity. (See, RCW 2.56.010)

To the extent this manual fails to provide adequate guidance in addressing or resolving a specific procurement problem or question, the State Court Administrator (SCA) will establish the policies to be followed.

Procedures aligned to these policies can be found in the Contracts and Procurement Procedures Manual, which will be published in the near future and should be used in conjunction with these policies. Both documents are the responsibility of the AOC Contract Manager, along with the monitoring of their implementation. AOC staff is responsible for the actual implementation of these policies and procedures.

B. Authority

As an independent branch of State Government, the Judicial Branch may establish contract and procurement policies. AOC, as an agency of the Judicial Branch, has chosen to adopt and administer the policies set forth in this document. These policies do not replace any constitutional or statutory rights possessed by the Judiciary. Deviations from these policies must be approved by the Washington State Court Administrator and must be communicated to the AOC Contracts Manager prior to implementation.

The Court Administrator has the authority to approve AOC's contracts and may also delegate approval authority to designated personnel within AOC. The following "signing authority" designations are in place for AOC and only the Court Administrator, or the person who has designated authority during the Court Administrator's absence under [AOC Policy 2.03](#), can approve further delegation of contract signing authority:

<u>Position</u>	<u>Authority</u>
Administrator	All AOC contracts
Director, Information Services	All AOC contracts charged to ISD budget
Director, Judicial Services	All AOC contracts charged to JSD budget

Director, Management Services	All AOC contracts charged to MSD budget
Contract Manager	All AOC contracts less than \$50,000 and data dissemination and research agreements in Data Dissemination Administrator's absence
Data Dissemination Administrator	All AOC data dissemination and research agreements and contracts less than \$25,000 in Contract Manager's absence

C. Principles

The AOC's Contract and Procurement Policies are based on the following principles:

- Open and effective competition
- Ethical behavior and conduct
- Good stewardship of the taxpayers' monies

Open and Effective Competition

When obtaining products, goods, and/or services, it is incumbent upon the AOC to assure that all persons or organizations who desire to do business with the AOC have a fair and equal opportunity to compete, and that the maximum level of reasonable competition will be pursued. AOC's goal is to:

- seek competition in an orderly and defined manner;
- take into account product functionality, delivery conditions, payment terms, vendor references and capabilities
- choose a vendor based on the anticipated price of the acquisition; and
- consider other factors as described in the solicitation.

The dollar thresholds for the various types of solicitations are as depicted in the table in Section III. The requirements and conditions related to each solicitation type are described in Section II of this manual.

Ethical Behavior and Conduct

All parties involved in the negotiation, performance, or administration of the AOC's procurements and contracts are required to act in good faith and in accordance with the Washington judicial branch standards of ethics and conduct. By way of example, but not intended as an exhaustive list, AOC must not:

- Solicit or accept any fee, compensation, gift, payment of expenses, or any other thing of value under circumstances where the acceptance may, or may appear to, improperly influence job performance;
- Use authority or influence to secure anything of value for private gain;
- Use state time, property, equipment, or resources for private gain;
- Solicit, negotiate, authorize, or execute a contract in which the employee, a member of the employee's family, or a business, organization, or person with which the employee is associated, has an interest; or
- Attempt to influence an official decision of the Judicial Department from which the employee, a family member, or a business or organization with which the employee is associated, may derive a benefit.

Vendors are prohibited from providing gifts, entertainment, or other similar items.

To ensure ethical behavior and conduct, a written contract is always required. A written contract makes expectations clear and enforceable and significantly reduces the risks inherent in oral agreements. In addition to the requirements set forth in the Statute of Frauds ([RCW 19.36.010](#)), AOC must execute written contracts when the agreement is for:

- The provision of any type of service.
- Goods that include services beyond the normal warranty period.

Good Stewardship of Taxpayers' Money

The AOC, like any public entity or agency, has an obligation to taxpayers to assure that its expenditures are carefully planned, fiscally responsible, and economically sound.

AOC must determine that:

- The service is critical to AOC responsibilities or operations to the Judicial Branch or is mandated or authorized by the Chief Justice of the Supreme Court of Washington.
- Sufficient staffing or expertise is not available within the AOC to perform the service.
- Other qualified public resources (governmental entities) are not available to perform the service either more efficiently or more cost effectively.

All payments to contractors should be based upon the receipt and acceptance of deliverables that have been set forth in the contract (performance based contract). Hourly rate contracts (time and materials) should be avoided and require prior approval of the Court Administrator or his/her designate prior to execution.

II. DOLLAR THRESHOLDS AND PROCUREMENT POLICY REQUIREMENTS

A. Goods and Services

In general, the Washington State Judicial Branch of government requires that contracted goods and services be competitively procured. Goods and services that are exempt from the competitive process are listed in Section III (e.g. Master Contracts with Department of Enterprise Services). Procurement policies for the AOC are based on dollar thresholds. A documented, informal process called "evidence of competition" is required for procurement of contracts of \$10,000 to \$24,999, and a documented, formal, competitive process called "competitive solicitation" is required for procurement of contracts of \$25,000 or greater. These amounts include travel, per diem, taxes, and all other expenses. So if compensation is below a threshold, but other expenses take it over, it is the total amount that is considered. Contracts are not to be structured to avoid competition. There are different requirements for each threshold as described below.

**\$1 - \$9,999 per contractor per fiscal year
Under \$10,000 Exemption**

- Competitive procurement is not required

**\$10,000 - \$24,999 per contractor per fiscal year
Informal (Evidence of) Competition**

- Requires written document be sent to a minimum of three firms and retained by AOC

**\$25,000 or more to one contractor per fiscal year
Formal Competition**

- Requires Request for Proposal (RFP), or Request for Qualifications/Quotations (RFQQ) sent to at least six vendors
- Requires publication of legal notice

III. EXEMPTIONS AND EXCEPTIONS FROM COMPETITIVE SOLICITATION

A. Exceptions to the Competitive Solicitation Requirements.

The three circumstances listed below allow for exceptions to the competitive procurement requirements.

1. Exception Granted by the Chief Justice or the Court Administrator

The Chief Justice of the Washington State Supreme Court or the Washington Courts - State Court Administrator may determine that a competitive procurement process is neither cost-effective nor necessary. This exception is intended for exceptional or unusual circumstances that may preclude the use of the standard competitive or filing processes. A request for exception must be submitted to AOC's Contract Manager prior

to execution of the contract. No verbal or written agreement shall be made until the exception request is approved. At a minimum, the exception request should include:

- A description of the type of service for which the exemption is requested;
- An explanation as to why AOC considers the exemption appropriate;
- Reason(s) why competitive procurement is not appropriate or cost-effective; and,
- An explanation of the effect or impact of not having the exemption.

If this exception is approved, a copy of the request and the signed approval of the Chief Justice or Court Administrator must be retained by AOC.

2. Sole Source Contracts

If there is only one source that is qualified or available to perform the services, then the AOC may enter into a contract with that provider without conducting any competitive process. For any sole source contract over \$10,000, a document justifying the sole source contract, called a Sole Source Justification (SSJ) must be prepared and signed by the AOC Director whose Division is requesting the contract. The MSD Contracts Manager must also review and approve all SSJs. Prior to awarding a sole source contract with a value of \$25,000 or greater, a legal notice must be published. If any response is received and the AOC MSD-Contract Manager determines that the responder is qualified to provide the services, the AOC will not award a sole source contract.

3. Agreements under Emergency Conditions

An emergency contract may be used when there is a set of unforeseen circumstances beyond the control of AOC that either:

- Presents a real, immediate threat to the proper performance of essential AOC functions; or
- May result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

These contracts are rare (e.g. major repairs due to force majeure).

B. Exempt Contracts

If the primary purpose or nature of a contract is in one of the categories described below, that contract is exempt from competitive procurement.

1. Contracts Totaling Less than \$10,000

Contracts with a value of less than \$10,000 are exempt. However, it is advisable to use a competitive process whenever possible.

2. Contracts Subject to Tariff

This exemption is limited to contracts where the fee with a contractor is pre-established by tariff set by the Washington Utilities and Transportation Commission or other public entity and, therefore, the fee structure is fixed. This exemption does not apply to contracts with the contractor where no fixed rate structure is imposed.

3. Interlocal and Interagency Agreements

This exemption includes contracts between AOC and another Judicial Branch Entity or between AOC and Washington State agencies or between AOC and either a unit of local government, the federal government, another state, or an Indian Tribe recognized by the federal government. These contracts may also be referred to as intergovernmental agreements and are governed by [chapter 39.34 RCW](#) of the Interlocal Cooperation Act.

4. Third Party Expenses

ayment of invoices received from third party building owners for facilities maintenance or improvements conducted by the building owner. The AOC must closely scrutinize the lease agreement to determine the actual party responsible for payment of such costs. (For example, installation of metal detectors, security cameras or security fencing at the specific request of the AOC where lease agreement requires the building owner to install, but AOC to maintain.)

5. Services for a Standard Fee

This exemption applies when a standard fee is established by the contracting entity or any other governmental entity, and a like contract for the standard fee for equivalent services is available to qualified applicants as services are required. Standard fees may include hourly or daily rates or similar fee-for-service rates (e.g. guardians who agree to provide guardianship services to Judicial Branch Entity clients at a standard rate established by the Public Guardian Board).

6. Contracts for Collaborative Research

This exemption may be used when an entity is applying for grant or research funds and names a firm or individual in the written application to perform specific services. Upon approval from the funding source and receipt of funds, the resultant contract with the named firm or individual is not required to be competitively awarded. This exemption is only applicable when the Judicial Branch Entity initiates the activity by applying for specific funding and names the contractor(s) in the funding or grant application. Typically, the contractors named in the application would be those who would provide specialized services and whose participation would be key to project success. Conversely,

contractors who provide more general services that would not impact the successful completion of the project and whose types of services are readily available from multiple firms should not be named in a grant or funding application.

7. Contracts for Computer Assisted Legal Research Provider

These are contracts with companies such as Westlaw and Lexis for their computer assisted legal research (CALR) products. These are subscription services and do not require a competitive procurement. However, each product must be reviewed by qualified entity personnel to determine which product is the best for the entity. Cost should be a factor, but not the only factor. While there is no need to advertise for bids/proposals, best practice should be to request a subscription proposal from each CALR provider, currently only Westlaw and Lexis, and then have the proposals reviewed by a panel of representatives of stakeholders/users of the prospective CALR provider.

8. Contracts for Client Services

This exemption applies to client service contracts. Client service contracts are awarded for professional or technical services to be provided by a contractor or person that will result in the delivery of direct services to Judicial Branch Entity clients. Clients are members of the public, external to state government, who have social, physical, medical, economic, or educational needs. Clients are considered to be those individuals the entity has statutory responsibility to serve, protect, or oversee. Client services include, but are not limited to, public guardianship services, civil legal aid, public defense services, employment and training programs, residential care, and subsidized housing.

9. Contracts for Architectural and Engineering Services

This exemption applies to contracts for architectural and engineering services defined as professional services rendered by any person, other than as an employee of the entity, contracting to perform activities within the scope of the general definition of professional practice in chapters [18.08](#), [18.43](#), or [18.96](#) RCW.

In the procurement of architectural and engineering services, the entity shall encourage firms engaged in the lawful practice of their profession to submit a statement of qualifications and performance data. The entity shall evaluate the statements of qualifications and performance data and conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select, based upon criteria established by the entity, the firm deemed to be the most highly qualified to provide the services required for the proposed project.

10. Contracts for Expert Witness Services

Expert witness contracts are those awarded when a subject matter expert is requested to testify as an expert witness for the purpose of litigation or an administrative hearing. The exemption should be used only when a lawsuit or request for an administrative hearing has been filed or there is a known potential lawsuit or administrative hearing for which expert witness services are needed. It should not be used when expert witness services are included as an add-on service strictly as a precautionary measure, in case a lawsuit or request for an administrative hearing could be filed as a result of the contractor's study, research or results.

Expert witness contracts may also include case consultation, research, legal services, or other related activities, but the purpose of the contract ultimately must be for expert witness services if the case goes to litigation or to an administrative hearing. An expert witness is someone who is a subject matter expert or has particular knowledge or skills related to a subject, not necessarily any person who might be called to testify in relation to a specific case. This exemption does not include lay witnesses.

11. Contracts for Interpreter Services and Interpreter Brokerage Services

Contracts for interpreter services and interpreter brokerage services are exempt when awarded on behalf of entity clients who are recipients of public assistance and who either have limited English-speaking skills or are sensory-impaired applicants.

12. Master State and Federal Contracts

Any master agreements such as those of Department of Enterprise Services, Consolidated Technology Services, Office of Chief Information Officer and the federal government have competitively bid and established agreements for use by state agencies. Judicial Branch Entities can use these agreements as long as the agreements allow state agency participation. Use of a Master Contract must be approved by the AOC Contracts Manager.

13. Community Rehabilitation Programs and businesses owned and operated by persons with disabilities

It is the intent of courts to encourage Judicial Branch Entities to purchase products and/or services manufactured or provided by Community Rehabilitation Programs (CRP) of the Department of Social and Health Services which operate facilities serving the handicapped and disadvantaged and for-profit businesses (DFP) owned and operated by persons with disadvantages.

Acquisitions made from CRPs or DFPs may be made without competition. Purchases from CRPs and DFPs shall be at the fair market price of such products. If the vendor does not accept the fair market price determination, then the Judicial Branch Entity must seek competition.

14. Surplus Equipment and Materials

When purchasing or exchanging used equipment or materials from another state entity, competitive bidding is not required.

15. Correctional Industries

Class II inmate work programs operated by the Department of Corrections provide goods and services for purchase by state entity's. The inmate work programs are businesses owned and operated by the state and known collectively as Correctional Industries (CI).

16. Best Buy Program

AOC may purchase identical or equal items available on Master Agreements directly from non-master agreement suppliers when it is more cost effective to do so.

17. Utilities

Fees, charges, and assessments for public utilities such as garbage, heat, sewer, cable TV, power, water, lights, fire protection, and recycle services are exempt from competition. This does not include maintenance agreements on computer equipment or software.

18. Postage and Postal Service

Postage and Postal Services that are not provided by Consolidated Mail Services. (e.g. the processing and mailing of Legal Financial Obligations).

19. Professional licenses and memberships

Professional association membership dues (e.g. chamber of commerce, Washington State Bar Association, etc) or professional licenses required by employer or state law where such transactions are valid reimbursable expenses.

20. Publications, subscriptions and information service directories

Publications, subscriptions and information service directories in print or electronic disc format (e.g. Thomas Register, Kelly Blue Book, Legal Research Publications, etc.).

21. Conferences and Seminars

The following are exempt from competition:

- Registration/tuition for conferences and seminars;

- Booth or room rentals, facilities, furnishings, and directly related services and materials; and
- Entrance fees to professional management award programs.

Note: Agreements under this category should be reviewed by the Contracts Manager and Financial Services for compliance with entity policies.

22. **Miscellaneous fees**

The following miscellaneous fees are exempt from competition:

- Court imposed fees
- Fees for obtaining records
- Costs associated with review boards
- Juries and directly related materials and services
- Court ordered attorney fees
- Out of court settlement costs
- Title insurance
- Registration/cancellation fees
- Transfer fees or other transaction fees
- Customs and brokerage fees and duties associated with procurement of goods from foreign countries where such costs are not paid by shipper
- Permits or licenses issued by governmental agencies.

23. **Legal/promotional advertisements and awards**

Legal or promotional advertisements cost via public media to include but not limited to newspapers, video, radio, billboards or journals.

24. **Costs for use of patented graphic design**

Costs for use of patented graphic designer artwork and reproduction rights associated with that patent.

25. **Original Equipment Manufacturer (OEM) repair and relocation services**

OEM repair services and component parts, and technical and maintenance services (including start-ups, training and testing), and chemical supplies, which can only be obtained from the original equipment manufacturer or regionally authorized single distributor.

C. Delegated Purchases

The Judicial Branch of Government has delegated purchase of the following goods and services to the General Administration. This delegation may be waived at any time by the Chief Justice or his/her delegated authority.

1. New Vehicles

Motor Vehicles under 14,000 GVW

- Heavy-duty Trucks, 14,000 GVW and Up
2. Used Vehicles
Used vehicles from the private sector with an estimated cost of \$11,500 or more.
 3. Industrial and farm tractors
Tractors, Wheeled, Industrial
Tractors, Wheeled, Farm - Type
 4. Rental of passenger vehicles
When the estimated rental cost is more than \$10,000 and/or the rental period is 60 days or more
 5. Boats, marine motors and trailers
With estimated cost of \$11,500 or more for the following:
Fishing Vessels
Boats
Barges, Cargo
Pontoons or Floating Docks
Foam Floatation Units w/recycle content
Removal of Dolphins
Vessels, Miscellaneous.
Repair Parts, Components, or Accessories for Marine Vessels
Lease or Rental of Marine Vessels
Maintenance or Repair for Marine Vessels
Trailers, Boats
Gas Engines, Marine
Diesel Engines, Marine
 6. Small Arms and Weapons
Small Arms
 - Revolvers and self-loading pistols
 - Assault rifles, rifles, carbines and shotguns
 - Sub-machine-guns and light machine-guns
 - Air guns (BB guns)Electronic Weapons
 - Portable devices or weapons from which an electric current, impulse, wave or beam may be directed, which current, impulse, wave or beam is designed to, injure or kill
 - A portable device designed or intended to temporarily immobilize or incapacitate persons by means of electric pulse or currentChemical Weapons and Agents
 - Chemicals whose intended use is to impede or temporarily incapacitate
 - Munitions and devices, specifically designed to impede or temporarily incapacitate through chemical action
 - Toxic chemicals whose intended use is to cause death or harm

- Munitions and devices, specifically designed to cause death or other harm through the toxic properties of those chemicals
 - Explosive Weapons
7. Universally Accepted Gasoline Charge Card
Obtaining, controlling and issuing of gasoline charge cards to purchase automotive fuel, lubricants, parts and services as necessary at commercial stations.

IV. DEFINITIONS

Client Services – Services provided directly to Judicial Branch Entity clients including, but not limited to, medical and dental services, employment and training programs, residential care, and subsidized housing. Clients are considered to be those individuals who the Judicial Branch Entity has statutory responsibility to serve, protect, or oversee.

Competitive Solicitation – A documented formal process for award of personal service contracts provides an equal and open opportunity to multiple qualified parties. The solicitation culminates in the selection of a contractor based on evaluation criteria set forth in the solicitation document that may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

Contract – All types of written agreements, regardless of what they may be called, for the procurement of or disposal of supplies, services or construction.

Contract Management – Activities related to contracting, including the decision to contract, contractor screening and selection, contract preparation, contract monitoring, auditing and post-contract follow-up.

Contract Manager – Any Judicial Branch Entity staff involved in the contracting process that is responsible for monitoring the contract toward successful completion (e.g. contract managers, program managers, Judicial Branch Entity executives, etc).

Contract Monitoring – Planned, ongoing or periodic activity that measures and ensures contractor compliance with the terms, conditions, and requirements of a contract.

Contractor – Any business entity, whether a sole proprietor, partnership, corporation, etc., that is providing goods or services to Judicial Branch Entities.

Emergency – A set of unforeseen circumstances beyond the control of the entity that either: (1) presents a real, immediate threat to the proper performance of

essential entity functions or (2) may result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

Evidence of Competition – Documentation demonstrating that the Judicial Branch Entity has solicited responses from multiple firms (minimum of three) in selecting a contractor for goods or services in the amount of \$10,000 to \$24,999.

Firm – Any business entity, whether a sole proprietor, partnership, corporation, etc., that is interested in providing goods or services to Judicial Branch Entities. A “firm” may also be referred to as a “business” or qualified “party” or as a “proposer” or “bidder” after a proposal or bid is submitted to a Judicial Branch Entity in response to a competitive procurement.

Judicial Branch Entity– Any office or department of the judicial branch, including the Supreme Court, Courts of Appeals, Administrative Office of the Courts, Office of Public Defense, Office of Civil Legal Aid, the Commission on Judicial Conduct, State Law Library and judicial branch boards and commissions.

Performance-based Contract - A written document detailing an agreement between parties that identify expected deliverables, performance measures or outcomes with payment contingent on their successful delivery and acceptance of the delivery by the AOC. Performance-based contracts also use appropriate techniques, which may include, but are not limited to, consequences and/or incentives to ensure that agreed upon value to the AOC is received.

Personal Service – Professional or technical expertise provided by a contractor to accomplish a specific study, project, task, or other work statement. This term does not include purchased services as defined below.

Personal Service Contract – An agreement, or any amendment thereto, with a contractor for the rendering of personal services. Personal service contracts may render services to Judicial Branch Entities, businesses, providers, other contractors, etc. If, however, services are provided directly to entity clients, the contracts are classified as client service contracts.

Procurement – The acquisition of goods or services.

Proposal – A document submitted by a firm in response to an informal or formal competitive solicitation issued by an entity, also called a “bid.”

Purchased Services – Services provided by a vendor to accomplish routine, continuing, and necessary functions. Generally, these services meet more ongoing needs of an entity for general support activities.

Examples of purchased services include delivery/courier services, equipment rental, janitorial services, standard laboratory tests, laundry services, and towing services.

Examples of information technology (IT) purchased services include computer programming, technology support, computer hardware and software maintenance, software installation, data entry, operation of a physical plant, and standard IT training related to hardware or software in use by an entity.

Reporting – Submission of a personal service contract or amendment, with written justification, to the Administrative Office of the Courts for reporting and to be made available for public inspection.

Review – AOC’s duty to analyze the contract or amendment based on compliance with the competitive procurement, filing and other requirements of these procedures. “Review” does not authorize AOC to approve or disapprove the contract filing; however, AOC may request additional information and make suggestions regarding the contract or amendment.

Sole Source – Contract awarded without competition, because the consultant providing the professional or technical expertise has skills, knowledge or ability of such a unique nature that the consultant is clearly and justifiably the only practical source to provide the service. The sole source award may also be based on the uniqueness or highly specialized nature of the services, sole availability of a consultant at the location required, or other special circumstance.