## Information

Personal Service Contract

## Number

PUR-11.00

## Applicability

This policy applies to University Administrators, Faculty, and Staff.

## Administrative Authority

Vice President for Finance and Chief Financial Officer

## Responsible Unit

Sally Molsberger, Chief Procurement Officer

Procurement Services, Service Complex, University of Louisville

Louisville, KY 40292

502-852-8223

purchase@louisville.edu

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## History

Original Date: Unknown

Revision Date(s): June 26, 2015; December 15, 2017; January 8, 2019; May 31, 2022; February 13, 2023; January 10, 2024

Reviewed Date(s): June 26, 2015; December 15, 2017; June 1, 2022; January 3, 2023; January 6, 2024

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**Categories**

# Reason for Policy:

Compliance with KRS 45A.690 - 45A.695

# Statement:

It is the policy of the University of Louisville 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.

# Related Information:

KRS 45A.095

Government Contract Review Committee of the Legislative Research Commission Policy 99-4

**Personal Service Contracts**

# 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 one of the following: University of Louisville, University of Louisville Athletic Association, or University of Louisville Research Foundation which must be specifically identified on each contract.

*Governmental emergency* means an unforeseen event or set of circumstances that creates an emergency condition as determined by the committee by promulgation of an administrative regulation.

*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.

*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.

# Procedures:

### 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 business 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. Please note this determination does not apply when contracting with a firm, partnership, or corporation.

### 2. Sub-Award or Personal Service Contract

When considering the establishment of a personal service on a sponsored project, the first determination to be made is 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:

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 Grants Administration 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.

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 and is usually professional in nature and is normally on a short term basis.

**3. Request for Proposal (RFP):**

KRS 45A.695 (3): Adequate notice of the need for a personal service contract shall be given by the authorized designee of the contracting body through a Request for Proposal (RFP) as specified in KRS 45A.695(3). To initiate the RFP process, contact Procurement Services at purchase@louisville.edu. Procurement Services will work with the department to establish the RFP, and the RFP will be posted on the Procurement Services website to satisfy the public advertising requirement.

KRS 45A.695 (4): The head of the contracting body or the authorized designee may conduct discussions with any offeror who has submitted a proposal to determine the offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.

As per requirements set forth in KRS 45A.695 (5) an award shall be made to the offeror determined by the head of the contracting body, or the authorized designee, to be the best qualified of all offerors based on the evaluation factors set forth in the Request for Proposals and the negotiation of fair and reasonable compensation. If compensation cannot be agreed upon with the best qualified offeror and if proposals were submitted by one (1) or more other offerors determined to be qualified, negotiations may be conducted with the other offeror or offerors in the order of their respective qualification ranking. In this case, the contract may be awarded to the next best ranked offeror for a fair and reasonable compensation. All determinations of the qualification rankings of offerors by the head of the contracting body or a designee of the offeror based on evaluation factors set forth in the Request for Proposals shall be made in writing.

Prior to contract award, Procurement Services shall complete a review of the contractor(s) against appropriate governmental exclusion/debarment/suspension lists. Any contractors who are identified as potential matches will be reported to the University Integrity and Compliance Office for verification procedures prior to contract award. Procurement Services will not proceed with contract award to any contractor verified as a positive match, without consultation with the University Integrity and Compliance Office and appropriate University Administration.

**FORMS:**

- University of Louisville State Appropriated Funds
- University of Louisville Research Foundation Funds
- University of Louisville Athletic Association Funds

**Departments are required to obtain the appropriate form from the website since the documents are monitored and updated periodically.

**SOLE SOURCE PERSONAL SERVICE CONTRACT**

KRS 45A.095: Provides for establishment of personal service contracts by noncompetitive negotiation only for sole source purchases or when competition is

not feasible as determined by Procurement Services in writing prior to award or when emergency conditions exist. Emergency conditions are defined per KRS 45A.095(3): An emergency condition is a situation which creates a threat or impending threat to public health, welfare, or safety such as may arise by reason of fires, floods, tornadoes, other natural or man-caused disasters, epidemics, riots, enemy attack, sabotage, explosion, power failures, energy shortages, transportation emergencies, equipment failures, state or federal legislative mandates, or similar events. The existence of the emergency condition creates an immediate and serious need for services, construction, or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten the functioning of government, the preservation or protection of property, or health or safety of any person. Sole source is a situation in which there is only one (1) known capable supplier of a service, occasioned by the unique nature of the requirement, the supplier, or market conditions.

Sole Source Personal Service Contract written justification must be signed by the Chair/Department Head. Written justification must be submitted to Procurement Services for approval prior to establishing a Personal Service Contract.

Personal service contract forms must be typewritten, and any changes made after signatures are affixed must be initialed by all parties. In the event that health-protected information is to be dealt with, it is the responsibility of the originating party to contact the University of Louisville Privacy Officer for assistance in compliance with all applicable statutes.

**AMENDMENT/EXTENSION TO A PERSONAL SERVICE CONTRACT**

An Amendment and/or an Extension to a Personal Service Contract shall be processed in the same manner as the original contract. An Amendment/Extension form shall be used if the parties to an established Personal Service Contract agree to increase or decrease funds, revise the scope of work, extend the time for performance within the current biennium, or any other change. It shall be a policy that no personal service contract amendment/extension shall be in order any sooner than ninety (90) days from the start date of an approved personal service contract.

**REVIEW AND APPROVAL PROCESS FOR PERSONAL SERVICE CONTRACTS**

a. All UofL State appropriated funded Personal Service Contracts and University of Louisville Research Foundation funds contracts will require signatures from the

Second Party, Department Chair, and University Procurement Services, University Counsel, and First Party (CFO). All UofL Athletic Association funds contracts will require signatures from Second Party, University of Louisville Athletic Director, University Procurement Services and University Counsel.

b. All University of Louisville State appropriated funded Personal Service Contracts must abide by KRS 45A.695(1) which states; "Except as provided in subsection (8) of this section, no one shall begin work on a personal service contract entered into by any contracting body, until notification of the personal service contract is filed with the Government Contract Review Committee. Each personal service contract shall have a cancellation clause not to exceed thirty (30) days' notice to the contractee."

c. University of Louisville Research Foundation and University of Louisville Athletic Association will not be required to be submitted to the Government Contract Review Committee, however, no work on contracts shall begin until all required signatures are affixed. Upon completion of all signatures, a completed copy of the approved personal service contract will be sent to the originating department and the awarded vendor. It is the responsibility of the department to establish and obtain vendor number.

d. The Government Contract Review Committee meets once per month to review State appropriated funded Personal Service Contracts. The completed Personal Service Contract must be submitted to the Government Contract Review Committee prior to the close of business of the last working day of the month. The department must complete the Proof of Necessity form on any personal service contract that is charged to general funds. It is the responsibility of the originating department to allow for adequate time to go through the entire University process to prepare for a completed personal service contract to be sent to the Government Contract Review Committee. The originating department will receive an email from Procurement Services as notification that the contract has been filed with the Government Contract Review Committee.

e. When the Personal Service Contract is approved by the Government Contract Review Committee, the originating department will receive an email from Procurement Services and a copy of the approved personal service contract. It is the responsibility of the originating department to enter requisitions using the assigned personal service contract number and the vendor number of the firm that the contract is awarded to.

f. It is the responsibility of the individual departments to keep current copies of completed PSCs on file and to Extend and/or Amend any contracts prior to the end date of the contract. It is the responsibility of each department to maintain accurate and current start and expiration dates for each contract.

Contracts that have passed their established expiration date may not be amended/extended for any reason.

## Responsibilities:

Procurement Services is responsible for processing of all Personal Services Contracts.

The Office of Sponsored Programs Administration (SPA), Clinical Contracts Division (CCD) and Office of Industry Engagement (OIE), are responsible for sub-awards, which are not personal service contracts, including the preparation, signing and non-fiscal management of sub-awards issued by the University. Additional information can be obtained by contacting management at 502-852-3788 (SPA), at 502-852-8359 (CCD), or at 502-852-7253 (OIE).

## Forms/Online Processes:

Amendment/Extension form

University of Louisville State Appropriated Funds

University of Louisville Research Foundation Funds

University of Louisville Athletic Association Funds