

**The City of Seattle
Department of Finance**

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**General Rules
for
Consultant Contracting**

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Note: The Appendices to this document provide a number of sample forms. These forms have not been formally adopted as part of the Rules and may be changed periodically without having to formally amend the Rules.

The dollar amounts listed in the following sections of the Rules may be adjusted annually based on changes in the Consumer Price Index. Please check to ensure that you have the most recent version of the Rules. Sections that may be changed annually: 6.30.060, 6.30.070, 6.50.010, 6.50.020, 6.62.010, 6.62.020, 6.70.040A, 6.70.040C, 6.70.040D, 6.75.090, 6.80.015, Ch. 6.105.

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Chapter 6.10 GENERAL PROVISIONS

6.10.010 Purpose

These General Rules for Consultant Contracting implement the provisions of Seattle Municipal Code (SMC) Ch. 3.114 (the City's consultant selection ordinance) and various state, federal, and other local regulations governing the selection and use of consultants by The City of Seattle.

6.10.020 Responsibilities of the Director of Finance

- A. The Director of Finance is authorized by SMC 3.114.040 and 3.114.120 to promulgate rules applicable for all City departments for the implementation of SMC Ch. 3.114.
- B. The Director of Finance, through the Construction and Consultant Contracting Division, shall assist City departments in interpreting these Rules, and shall serve in an advisory role to departments on matters related to the procedures outlined in these Rules. In providing interpretation and advice to departments, the Director of Finance affirms the policy of SMC Ch. 3.114 that a decision to contract or approve a waiver to the consultant selection process is the responsibility of the individual department head contracting for the services.

6.10.030 Compliance with Applicable Laws

Departments are responsible for complying with all ordinances that apply to the selection of City consultants, as well as regulations of local, state, or federal agencies that may apply to particular contracts.

Departments should make it a practice to regularly consult with those City departments and other agencies that promulgate, interpret, enforce, or administer laws or rules regarding consultant contracting.

6.10.040 Audit Responsibilities

The City Auditor is authorized by SMC 3.114.130 to audit each consultant contract entered into by a City department office to verify, among other things, that the procedures prescribed by SMC Ch. 3.114 have been followed; that the compensation or other consideration provided to any consultant has been appropriate, under the circumstances; and that the contracted for services were provided in a timely manner.

6.10.050 Selection Requirements for Specialized Contracts

Chapter 6.70 establishes additional consultant selection requirements for the following types of consultant contracts: Retainer basis contracts, accounting/auditing and management contracts, architectural contracts, landscape architectural contracts, land surveyor contracts, engineering contracts, federally funded contracts, and capital improvement contracts. Refer to Chapter 6.70 for detailed information about the requirements.

6.10.060 Definitions

A. **Consultant:** "Consultant" means any person, association, partnership or corporation that by experience, training and education of the principals, officers or employees thereof has established a reputation or ability to perform specialized activities on a discrete, nonrecurring basis over a limited and preestablished term as an independent contractor, delivering or providing for a monetary or other consideration, advice recommendation(s), report(s), analysis(es), evaluations(s), audit(s), survey(s), or other products of cognitive processes or expert or professional services including but not limited to services from any attorney, architect, accountant, public relations advisor, dentist, physician, surgeon, psychiatrist, psychologist, veterinarian, engineer, surveyor, appraiser, planning consultant, investment counselor, and actuary; provided, that the following shall not be deemed a "consultant":

1. Any provider of services appropriate for a service contract pursuant to SMC Ch. 3.18 (such as janitorial or guard service, office equipment and vehicle maintenance, computer and peripheral equipment maintenance, microfiche and page printing services, boat dry-docking, etc.), and
2. Any expert witness retained by the Law Department in connection with anticipated or actual litigation, or by the City Council in connection with any hearing on the nomination or appointment of any individual as a municipal officer.

Note: The meaning of the phrase "nonrecurring basis" as used in this section to define a consultant must be determined in the context of the rest of the definition of consultant. When read in that context, it is clear that the definition of consultant is not meant to include work that is of a repetitive and a noncognitive, nonexpert or nonprofessional nature. The "nonrecurring basis" requirement does not preclude a consultant from performing some repetitive, noncognitive tasks as part of a contract, provided that the primary purpose or essence of the contract is to provide services of a cognitive, professional or expert nature.

The phrase "over a limited and preestablished term" carries with it the intent that the duration or term of the contract be defined in the contract document. The phrase prohibits open-ended contracts with no termination provisions or contemplated end which provide one consultant with a virtual and unlimited monopoly in the provision of services to the City. The term is not meant to prohibit contracts and amendments for long term projects which require the ongoing services of a consultant to complete a project.

The application of the phrase "nonrecurring basis over a limited and preestablished term" shall be interpreted on a case by case basis by the department head contracting for services, consistent with the guidelines provided herein. Department heads are encouraged to seek the advice of the Law Department in cases where a proposed consultant contract may appear not to meet the definition of a consultant under these Rules.

- B. **Contract:** "Contract" means and includes all types of agreements between or among the City and one or more consultants, regardless of what such agreements may be called, for the procurement of consultant services, and includes agreements modifying or amending consultant contracts.
- C. **Department:** "Department" means any City department, office, board, commission, council, agency or other administrative or operating part of the City, and any division or part or combination thereof.
- D. **Estimated to Cost:** "Estimated to cost" means the anticipated charges for all activities that a consultant agrees to perform pursuant to contract, including expenses for which the consultant will be reimbursed, and the anticipated charges for all additional specialized activities to be performed by the consultant under all renewals, extensions, and amendments of the contract and under subsequent stages of the same project.

6.10.080 Contracting With Current City Officers and Employees

- A. These Rules and SMC Ch. 4.16 (Code of Ethics) shall govern the circumstances in which the City may contract with a current City officer or employee. As used in this section, the phrase "contract with a current City officer or employee" includes the following:
 - 1. Contracting directly with a City officer or employee or a business owned by a current City officer or employee.
 - 2. Contracting with a consultant who employs a current City officer or employee who will be involved in performing any of the work of the contract.
 - 3. Approving as a subcontractor a business that is owned by a current City officer or employee.
 - 4. Approving as a subcontractor a business that employs a current City officer or employee who will be involved in performing any of the work of the contract.
- B. Departments may contract with a current City officer or employee unless it is with a current City officer or employee who:
 - 1. has official duties that would appear to be in conflict with or incompatible with the contract duties or whose independent judgment in taking official actions would appear to be impaired by the contract; or
 - 2. must in the course of official duties, act on or supervise those who act on the contract, e.g., administer it, evaluate the work, recommend or decide on funding; or
 - 3. in the course of official duties, has been involved in, or supervised those involved in, determining the scope of work of or the selection process for the contract or implementing

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the selection process or administration process for the contract.

Note: To ensure compliance with IRS regulations, when processing payments for a contract with a current City officer or employee, please contact the Vendor Relations Unit in the Department of Finance Purchasing Services Division (684-0539).

6.10.090

Contracting With Former City Officers and Employees

- A. These Rules and SMC Ch. 4.16 (Code of Ethics) shall govern the circumstances in which the City may contract with a former City officer or employee. As used in this section, the phrase "contract with a former City officer or employee" includes the following:
1. Contracting directly with a former City officer or employee or a business owned by a former City officer or employee.
 2. Contracting with a consultant who employs a former City officer or employee who will be involved in performing any of the work of the contract.
 3. Approving as a subcontractor a business that is owned by a former City officer or employee.
 4. Approving as a subcontractor a business that employs a former City officer or employee who will be involved in performing any of the work of the contract.
- B. Different standards apply for contracting with a former City officer or employee, dependent on the length of time since the City officer or employee terminated City office or employment.

More than 12 months ago: Departments may contract with a former City officer or employee who terminated City office or employment more than twelve (12) months ago.

Within the last 12 months: Departments may contract with a former City officer or employee who terminated City office or employment within the last twelve (12) months subject to the following restrictions.

Departments may not contract with a former City officer or employee who terminated City office or employment within the last twelve (12) months and who is contracting to:

1. assist another in a proceeding before the City agency in which he/she has been an officer or employee; or
2. assist someone on a matter in which he/she was officially involved, participated or acted in the course of City duty; or
3. represent a person or entity as an advocate in any matter in which he/she was officially involved in the course of City duty.

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Any department that contracts with a former City officer or employee who terminated City office or employment within the last twelve (12) months shall promptly notify the Executive Director of the Ethics and Elections Commission about the agreement.

6.10.100 Contracting With Family Members and Other Conflicts of Interest

In developing and executing consultant contracts, department heads and City officers and employees should avoid conflicts of interest with consultants or employees of a consultant, or relationships with consultants or employees of a consultant that may be perceived by the public as a conflict of interest. The following ethical standards do not necessarily describe all prohibited situations that may constitute a conflict of interest.

- A. **Conflicts of Interest with Consultant.** A department head or a City officer or employee shall not contract with a consultant:
1. with whom the department head or City officer or employee has a business interest or close family relationship (i.e., spouse or domestic partner; any dependent parent, parent-in-law, child, son-in-law, or daughter-in-law; or any of the following who reside in the household of the City officer or employee: parent, parent-in-law, sibling, uncle, aunt, cousin, niece or nephew); **and**
 2. when the department head or the City officer or employee was, is, or will be involved in the consultant selection, negotiation, drafting, signing, or administration of the consultant contract, or evaluating the consultant's performance.
- B. **Conflicts of Interest with Employee of Consultant.** A department head or City officer or employee shall not contract with a consultant, who employs a person:
1. who will be involved in the negotiation, drafting, signing, administration, or performance of the agreement, and
 2. with whom either the department head or City officer or employee has a business interest or close family relationship, and
 3. when the department head or City officer or employee was, is, or will be involved in the consultant selection, negotiation, drafting, signing, or administration of the consultant contract, or evaluating the consultant's performance.

6.10.110 Prohibited Uses of Consultant Contracts

In developing consultant contracts, departments should refer to the definition of "consultant" in Section 6.10.060 of these Rules to ensure that the proposed activity is an appropriate use for a consultant contract. Consultant contracts may not be used for:

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- A. Acquisition of supplies, materials, equipment, or non-consultant services (e.g., printing), except for those that are incidental to the performance of a consultant service.
- B. Contracting for construction or construction-related activity, except for activity that is incidental to the performance of a consultant service. Any such work may be subject to prevailing wage requirements under State law that must be addressed as a requirement in the consultant agreement.
- C. Contracting with an individual to act in the capacity of a City employee or contracting with an individual who has been nominated as a department head by the Mayor, but not yet confirmed by the City Council. Departments should contact the Personnel Department to discuss appropriate methods for compensating such individuals.

Because some contracts contain a mixture of consultant services along with either acquisition or construction activity, departments should contact the Construction and Consultant Contracting Division for advice when they have questions about whether a proposed activity qualifies as a consultant service.

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Chapter 6.20 INSURANCE REQUIREMENTS

6.20.010 General Provisions

Departments are required to consult with the Risk Management Administrator in the Department of Finance to obtain recommendations on whether the amounts and types of insurance coverage included in the standard consultant contract wording found in Section 6.75.130 (Roster contracts) and Sections 6.80.020, 6.80.030, 6.80.040 (non-Roster contracts) of these Rules are appropriate for the services to be provided on each contract.

In some instances, particularly when the work to be performed relates in any way to pollutants, environmental cleanup, or abatement of hazardous substances, additional coverages beyond those specified in the standard consultant contract language may be necessary. In other instances, it may be appropriate to reduce the amounts and types of insurance required from what is included in the standard consultant contract provisions.

The following is the process to be used by departments in resolving differences of opinion between departments and the Risk Management Administrator regarding insurance requirements for contracts:

- A. If a department disagrees with the recommendations of the Risk Management Administrator, it should explain the reasons for the disagreement and attempt to work out a mutually agreeable approach.
- B. If no agreement can be reached, the issue will be referred to the Director of Finance, or his/her designee, for decision. The Director of Finance or his/her designee will consult with the Risk Management Administrator, Law Department, and the affected department head and staff before reaching a decision.

6.20.020A When Insurance Documentation is Required

Departments are required to include the appropriate types and amounts of insurance coverage in each consultant contract. The following describes the conditions under which the consultant is required to submit documentation that they have the insurance required by the contract:

- A. Documentation not required for consultant contracts under \$15,000. Unless the service to be performed involves one of the exceptions noted below in Section 6.20.020A (C), the City does not require the consultant to submit documentation of the insurance coverage specified in the contract.
- B. Documentation required for consultant contracts of \$15,000 or more. Departments are required to obtain documentation of the consultant's insurance coverage as specified in the contract, and to file a copy of the documentation with the Risk Management Administrator in the Contracting Services Division.

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C. Documentation required for consultant contracts of any dollar amount involving certain services. Departments are required to obtain documentation of the consultant's insurance coverage as specified in the contract when the services to be performed involve any of the following, and to file a copy of the documentation with the Risk Management Administrator in the Contracting Services Division:

1. Architectural or Engineering Services, including, but not limited to, construction administration, land surveying or mapping services.
2. Environmental Related or Hazardous Materials Services, including, but not limited to, wetland services, laboratory testing, real estate transactions, marine surveying, and remedial action consulting services.
3. Training Manuals for High Risk Services including, but not limited to, development of Police Department and Fire Department training manuals, computer training manuals, highly complex machinery or systems design manuals, some public relations manuals, and political or media-related manuals.
4. Personal Growth Training Classes, including, but not limited to, drug and alcohol related training, some diversity training classes (e.g., cultural diversity), marriage and family counseling courses, social or psychology training courses, and employment practices classes.
5. Other services as determined by the Risk Management Administrator. The list noted above does not represent a comprehensive list of the types of services for which documentation of insurance coverage may be required. Departments should consult with the Risk Management Administrator for assistance if there are any concerns about whether to require the consultant to submit documentation of insurance coverage.

6.20.020B Standards for Insurance Documentation

Note: This section of the Rules describes the City's current standards for acceptable insurance documentation and is intended to provide departments with the necessary information to independently evaluate insurance documentation. However, departments (particularly departments who do not execute many consultant contracts) should feel free to contact the Risk Management Administrator to review insurance documentation or to assist with any questions about specific insurance documentation.

The City will, in most cases, accept as evidence of the consultant's insurance coverage, the Declarations pages of a policy. Depending on the type of policy and the services to be provided by the consultant, an insurance policy and/or all referenced forms and endorsements must also be submitted. The City does not consider a certificate of insurance (either an ACOFD form or any other certificate of insurance form) to be acceptable evidence of insurance coverage.

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In addition to either Declarations pages or an insurance policy and/or all referenced forms and endorsements, all insurance documentation submitted to the City must include evidence that The City of Seattle has been named as an additional insured on each required insurance policy (except for professional liability insurance).

The following provides guidance for departments in determining whether to accept Declarations pages, an insurance policy and/or all referenced forms and endorsements as evidence of insurance coverage, and describes the requirements for additional insured endorsements:

■A. Declarations Pages. A photocopy or facsimile of the Declarations pages issued by the insurance company, demonstrating the types and amounts of insurance coverage required by the contract, may be submitted as acceptable evidence of insurance on most consultant contracts. The insurance premiums paid by the consultant may be blacked out on the Declarations pages submitted to the City. See Section 6 20.030 of these Rules for guidelines on reading and interpreting Declarations pages. However, there are a series of situations, listed below, in which a copy of the insurance policy and/or referenced forms and endorsements (or additional documentation to the satisfaction of the Risk Management Administrator) must be submitted in addition to the Declarations pages.

■B. Insurance Policy and/or Forms and Endorsements. A photocopy or facsimile of the insurance policy and/or all of the referenced forms and endorsements must be submitted by the consultant as evidence of insurance whenever any of the following applies:

1. Environmental services performed. The services to be provided by the consultant relate in any way (handling, designing, studying, overseeing work, etc.) to pollutants, environmental cleanup, or abatement of hazardous substances. The complete insurance policy with all referenced forms and endorsements must be submitted in this instance along with the Declarations pages.
2. Company not licensed in Washington. The insurance company is not licensed to do business in the State of Washington.

Departments may verify whether an insurance company is licensed to do business in the State of Washington by one of the following methods:

a.) If the insurance broker/agent placing the insurance is located within the State of Washington, departments may assume that the insurance company is acceptable (either licensed to do business in the State of Washington or that the required "surplus lines" stamp will have been obtained from the State Insurance Commissioner by the insurance broker/agent).

b.) If the insurance broker/agent placing the insurance is located outside of the State of Washington, departments

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must check the licensing status of the insurance company(s) by referencing A.M. Best's Key Rating Guide. Departments may call the Risk Management Administrator to verify whether the insurance company is listed in Best's as licensed to do business in the State of Washington. If the insurance company is not licensed to do business in the State of Washington, the insurance broker/agent must obtain the required "surplus line" stamp from the Washington State Insurance Commissioner or the Surplus Line Association of Washington and furnish the City with a copy of the Declarations pages bearing that stamp.

3. Non-standard forms and endorsements used. The Declarations pages list non-standard forms and endorsements rather than the usual Insurance Services Office (ISO) forms and endorsements numbers. These may include forms and endorsements specific to the insurance company or "manuscript" endorsement forms that are specific to the insurance policy to which they are attached. See Section 6.20.030 of these Rules for guidelines on reading and interpreting Declarations pages. A copy of all non-standard forms and endorsements (forms and endorsements not issued on Insurance Services Office (ISO) forms) must be submitted in this instance along with the Declarations pages.

Whenever submittal of an insurance policy and/or non-standard forms and endorsements is required, the policy, forms and endorsements should be submitted to the Risk Management Administrator in the Contracting Services Division for review and approval.

- C. Additional Insured Endorsement. In addition to either Declarations pages or an insurance policy and/or all non-standard forms and endorsements, all insurance documentation submitted to the City must include evidence that The City of Seattle has been named as an additional insured on each insurance policy (except for professional liability insurance). The evidence submitted to the City indicating that The City of Seattle has been named as an additional insured should be consistent with the following:

1. Standard Additional Insured Endorsement. If the additional insured endorsement is issued on an Insurance Services Office (ISO) endorsement form (typically form number CG 20 10), the endorsement must specifically name "The City of Seattle, its officers, elected officials, employees, agents, and volunteers" as an additional insured. The additional insured endorsement must be signed by an authorized representative of the insurance company and include the policy number and the name of the consultant (as the insured) on the endorsement.

It is not acceptable for the additional insured endorsement to name a department of the City as an additional insured (e.g., Seattle Public Utilities). It is acceptable for the additional insured endorsement to name the City of Seattle and a

department as an additional insured (e.g., The City of Seattle, Seattle Public Utilities). If the insurance broker refuses to include the phrase indicated above on the additional insured endorsement, it is acceptable if the additional insured endorsement just names "The City of Seattle" as an additional insured; this is not the preferred wording, but it will protect the City's interests.

2. **Non-Standard Additional Insured Endorsement.** If the additional insured endorsement is issued on a non-ISO endorsement form, the endorsement must be consistent with one of the following options:

a) The endorsement (or a clause in the policy) provides a blanket clause adding "anyone for whom you [the consultant] are required to provide additional insured status under a contract or a permit" (or equivalent language) as additional insureds. If the endorsement number is not listed on the Declarations pages, the policy number must be noted on the endorsement.

b) The endorsement contains the following wording:

"The City of Seattle, its officers, elected officials, employees, agents and volunteers are an additional insured for all coverages provided by this policy and shall be fully and completely protected to the extent provided in said policy for any and every injury, death, damage and loss of any sort sustained by any person, organization or corporation in connection with any activity performed by the Consultant (except for professional liability) by virtue of the provisions of that Agreement between the City of Seattle and [insert name of Consultant] entitled [insert identification of Agreement] (Agreement No. _____), dated _____."

"The coverages provided by this policy to the City or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to the City of Seattle."

c) If the additional insured endorsement is not consistent with either of the two options above, the endorsement must be reviewed with the Risk Management Administrator in the Contracting Services Division to ensure it contains no conditions or restrictions which would unacceptably limit the City's coverage.

The Risk Management Administrator should be consulted if there are questions regarding any of the insurance requirements.

- **Note:** Departments can access the City's database at <http://inweb/finance/risk/> to find out if a consultant is already doing business with the City or what insurance documentation the consultant has on file with the Risk Management Administrator. For additional information regarding insurance standards, definitions, or forms and procedures for consultant contracting, departments should access Risk Management's website at <http://inweb/contracting/rmguid.htm>

6.20.030 Reading and Interpreting Declarations Pages

Declarations pages are issued by the insurance company and vary in appearance depending on the company and the type of policy. In reviewing Declarations pages, departments should examine the following or request review of the insurance documentation by the Risk Management Administrator:

- A. **Named Insured.** The named insured (consultant) on the Declarations pages must match exactly with the name of the consultant business as indicated on their contract with the City.

Note: For large consultant firms, there will often be continuation Declarations pages with a frequently lengthy list of DBA ("doing business as") names or joint ventures. As long as the exact name of the consultant business as it appears on their contract with the City appears on this list, it is acceptable.

- B. **Qualifications of the insurance company.** The insurance company writing the policy must:
1. **Acceptable rating.** Have a rating of A:VII or higher in the A.M. Best Key Ratings Guide and,
 2. **Licensed.** Be licensed to do business in the State of Washington. Departments may verify whether an insurance company is licensed to do business in the State of Washington by one of the following methods:
 - a) If the insurance broker/agent placing the insurance is located within the State of Washington, departments may assume that the insurance company is acceptable (either licensed to do business in the State of Washington or that the required "surplus lines" stamp will have been obtained from the State Insurance Commissioner by the insurance broker/agent).
 - b) If the insurance broker/agent placing the insurance is located outside of the State of Washington, departments must check the licensing status of the insurance company(s) by referencing the A.M. Best's Key Rating Guide. Departments may call the Risk Management Administrator to verify whether the insurance company is listed in Best's as licensed to do business in the State of Washington. If the insurance company is not licensed to do business in the State of Washington, the insurance broker/agent must obtain the required "surplus line" stamp from the Washington State Insurance Commissioner or the Surplus Line Association of

Washington and furnish the City with a copy of the Declarations pages bearing that stamp.

- C. Effective and expiration dates of the policy. The insurance policy must be effective prior to the consultant beginning work on the contract. If the consultant's work has not been completed and the insurance policy is scheduled to expire prior to completion of the work, the department shall, within 30 days of the expiration date of the insurance policy, obtain evidence that the policy will be renewed. Acceptable interim evidence of renewal may include an insurance binder (referred to by some insurance companies as a renewal certificate), or a letter signed by the insurance broker/agent indicating that no notice of non-renewal has been received on the policy and that they expect to renew the policy on substantially the same terms. Departments must obtain a copy of the Declarations pages as permanent evidence of insurance coverage once the policy has been renewed.
- D. Limits of liability. The amounts of insurance coverage listed on the Declarations pages for "each occurrence" and "general aggregate" for commercial general liability insurance (CGL), and "liability" for commercial automobile liability insurance should be consistent with the amounts required by the consultant contract. Any deductible or self-insured retention must be disclosed on the Declarations pages or an endorsement and deductibles over \$25,000 should be reviewed and approved by the Risk Management Administrator.

Note: If the Declarations pages do not list limits of liability next to the references to "products - completed operations," or "personal and advertising injury," departments should request the Risk Management Administrator to review the insurance policy and/or endorsements to determine if the policy contains an unacceptable exclusion for these types of coverage. In addition, if the consultant contract requires "fire damage" or "medical payments" insurance coverage (extensions of commercial general liability), departments should review the Declarations pages to ensure that the limits of liability for "fire damage" or "medical payments" are listed on the Declarations pages.

- E. List of form and endorsement numbers. The Declarations pages will list various form and endorsement numbers that apply to the insurance policy. It is important for departments to review these numbers carefully since they can directly affect the type and amount of insurance being provided by the consultant.
1. Additional insured endorsement. Refer to Section 6.20.020B (C) of these Rules for guidelines on acceptable additional insured endorsements.
 2. ISO forms and endorsements. The Insurance Services Office (ISO) publishes forms and endorsements for a variety of purposes that contain consistent language and are considered to be the industry standard. Generally, except as noted below, if Declarations pages list ISO form and endorsement numbers, departments may be assured that the insurance coverage provided does not include any unusual exclusions that would limit the coverage.

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ISO form and endorsement numbers consist of four parts. The first two letters represent the line of business: CG (or GL on old forms) for commercial general liability, CA for commercial auto, CP for commercial property, BO for business owners, CM for inland marine (Bailee's, floaters and similar), CR for crime, and IL for "inter-line" or general forms. The next two digits represent the category of the form or endorsement: In CG forms, 20 refers to "additional insured" and 21 refers to some form of an exclusion or restriction. The next two digits identify the specific form, and the final four digits identify the edition or revision date of the form.

Caution: If an ISO endorsement number listed on Declarations pages includes a 21 (e.g., CG 21 xx), departments should be aware that the endorsement is limiting or excluding some type of coverage. The Risk Management Administrator should be consulted for evaluation of the insurance documentation in this instance.

3. **Non-ISO forms and endorsements:** Declarations pages that list non-ISO form and endorsement numbers (i.e., not beginning with CG, CA, CP, BO, CM, CR, or IL) contain forms or endorsements that are specific to a particular insurance company (e.g., WW from Western World, HB from Hartford, etc.) or are a "manuscript" form or endorsement ("End. No. 1," "Special 4," etc.) that is specific to the particular insurance policy to which it is attached. Departments should obtain a copy of the non-ISO forms and endorsements for Commercial General Liability insurance policies (and for Commercial Automobile Liability policies if the contract work involves hauling hazardous materials) and review them with the Risk Management Administrator to ensure that they do not contain exclusions or restrictions that would limit the insurance coverage required by the consultant contract.
4. **Occurrence Form Commercial General Liability:** Departments should check to ensure that the Commercial General Liability policy is written on an "occurrence form." This can be identified on the Declarations pages by the ISO form number of CG 00 01. Declarations pages with a CG 00 02 form number listed indicates that the policy is on a "claims-made" basis and is unacceptable. Some Declarations pages may also contain a notation that "This is a claims-made policy," and are also unacceptable. (Professional liability and environmental policies are generally only available on a claims-made basis and are usually acceptable. The Risk Management Administrator should be consulted to review any claims-made professional liability insurance documentation).

6.20.040 Glossary of Insurance Terms

The following insurance terms are used frequently in this section of the Rules and are intended to provide a brief definition in simple language to help

departments understand insurance documentation requirements. These definitions are not intended as a formal or legal definition of any of the terms and should not be relied upon to resolve specific coverage questions or disputes.

Best's Book: Officially known as the A.M. Best Key Ratings Guide, this annual publication provides a variety of information about insurance companies including rating their operating condition and listing the states in which they are authorized to do business.

Binder: A legal agreement issued either by an insurance agent or an insurance company to provide temporary insurance until a policy can be written. It should contain a definite time limit, should be in writing, and should clearly designate the company in which the risk is bound, as well as the amount, the perils insured against and the type of insurance.

Certificate of Insurance: A certificate issued by an insurance broker or agent listing insurance policies for an insured. Declarations pages and/or a copy of the policy and forms and endorsements are required on certain City contracts to document the consultant's insurance coverage.

Claims-Made Policy: Policies written under a claims-made basis will cover claims made (reported or filed) during the year the policy is in force for any incidents which occur that year or during any previous period the policyholder was insured under the claims-made contract. If a claim is not made within 60 days of the end of the policy period, there will generally be no coverage. A "tail" or extended reporting period can be purchased which will allow up to five additional years to report claims, but it is frequently subject to restrictions and exclusions. The claims-made form of coverage is in contrast to the occurrence policy which covers today's incident regardless of when a claim is filed one or more years later.

Contractual Liability: This is a usual component of commercial general liability insurance, unless it is excluded by an endorsement (ISO #: CG 21 39). It provides coverage for liability assumed under any contract or agreement over and above that liability which may be imposed by law. For example, the indemnification or "hold harmless" clause in a consultant contract contractually imposes more of a liability against the consultant than does the law. Contractual liability insurance provides coverage to the consultant for this type of contractual provision.

Commercial General Liability: This type of insurance is the standard form of broad liability coverage and usually includes coverage for Premises/Operations Liability; Products/Completed Operations; Personal/Advertising Injury; Contractual Liability; and Independent Contractors Liability.

Declarations Pages: Insurance documentation issued by the insurance company to the insured indicating effective dates of the policy, limits and types of insurance covered by the policy, and exclusions or restrictions to the policy.

Employers Contingent Liability or Stop Gap Liability: This coverage is provided by Part 2 of the basic workers compensation policy and pays on behalf of the insured all sums that the insured shall become legally obligated to pay as damages because of bodily injury by accident or disease sustained

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by any employee of the insured arising out of and in the course of his employment by the insured.

Endorsement: A form issued by an insurance company or the Insurance Services Office (ISO) that changes provisions and coverage of an insurance policy.

Fire Damage Or Fire Legal Liability: This is a usual component of Commercial General Liability insurance and provides coverage for any liability of the insured's for fire damage to property rented by the insured. This type of coverage is subject to a separate limit than the Commercial General Liability policy limit.

Independent Contractors Liability: This is a usual component of Commercial General Liability insurance which provides coverage for bodily injury and property damage liability arising out of the negligence of a subcontractor hired by the Consultant.

Insurance Agent: A person or organization who solicits, negotiates, or instigates insurance contracts on behalf of an insurance company. The agent might be an independent business-person or an employee of the insurance company.

Insurance Broker: A solicitor of insurance who does not represent insurance companies as does an agent; rather, the broker represents the insured and places orders for coverage with insurance companies designated by the insured or with companies of the broker's own choosing.

Insurance Company: A company that takes the risk in insuring others through an insurance policy.

ISO: Insurance Services Office is a national, nonprofit, licensed organization established for the purpose of promulgating property/casualty rates. ISO issues endorsement forms accepted by many insurance companies as the industry standard. ISO endorsement form numbers for commercial general liability begin with CG and for commercial automobile insurance begin with CA. Endorsement forms specific to a particular insurance company or to a particular policy have different numbering systems. These company or policy specific endorsements (non-ISO) need to be evaluated more carefully by departments.

Occurrence Basis: An occurrence form policy covers claims arising from injury or damage that occurs during the policy period regardless of when the claim is made against the insured. This form of coverage is in contrast with a claims-made policy.

Personal Injury: This is a usual component of commercial general liability insurance, unless it is excluded by an endorsement (ISO#: CG 21 38). It provides coverage for damage which is not bodily injury such as false arrest, libel or slander, invasion of privacy or wrongful eviction.

Policy: An insurance policy consists of the following basic components: policy conditions, Declarations, forms (normally the standard boilerplate language or "insuring agreement" which includes whether the policy is a claims-made or an occurrence policy), and endorsements.

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Premises/Operations Liability: This is a usual component of Commercial General Liability insurance. It insures against liability incurred at the consultant's premises (site of business) and their operations (where they perform their work).

Products/Completed Operations: This is a usual component of Commercial General Liability insurance, unless it is excluded by an endorsement (ISO#: CG 21 04). It covers liability incurred by a merchant or manufacturer as a consequence of some defect in the product sold or manufactured (products) or the liability insured by a consultant after they have completed a job as a result of improperly performed work (completed operations).

Professional Liability: This insurance covers the consultant against liability for damages based upon his/her professional errors and omissions or mistakes.

Surplus Lines Insurance: This type of insurance refers to coverage from an insurance company not licensed to do business in a particular state but which is placed in that state on an unregulated basis.

**Chapter 6.30
FILING AND REPORTING REQUIREMENTS**

6.30.005 Reporting

- A. Departments shall submit on a monthly basis to the City Budget Office (CBO) information on the status of all consultant contracts, on a form to be determined by CBO.
- B. CBO shall consolidate reports received from departments and provide to the City Council, on at least a quarterly basis, a summary of consultant contracting activity.

6.30.010 Original Signature Copy of Contract to City Clerk

Departments shall file an original signature copy of each contract and any modification (amendment, supplement, etc.) with the City Clerk immediately following execution by all parties. Departments shall use the "Consultant Contract and Amendment Transmittal Form" (see Appendix F) as a cover sheet for filing.

6.30.020 Copy of Contract to the Department of Finance

Departments shall file a copy of each contract and any modification (amendment, supplement, etc.) with the Construction and Consultant Contracting Division in the Department of Finance immediately following execution by all parties. (Mail Code: 14-08-03). Departments shall use the "Consultant Contract and Amendment Transmittal Form" (see Appendix F) as a cover sheet for this filing.

A copy of the following completed documents should be attached to the copy of each contract (when applicable) submitted to the Department of Finance:

- A. Consultant Evaluation Committee Report (Sections 6.30.060 and 6.50.100)
- B. Equal Benefits Compliance Declaration form (for all contracts of \$37,000 or more).

6.30.040 Performance Review and Evaluation Report

Departments shall file a Performance Review and Evaluation Report with the City Clerk and the Construction and Consultant Contracting Division in the Department of Finance (Mail Code: 14-08-03) within 30 days after the expiration or termination date of every consultant contract.

The Performance Review and Evaluation Report shall:

- A. Describe the deficiencies noted in any periodic consultant performance evaluations and the action (if any) taken by the consultant in response thereto.
- B. Indicate whether such responsive actions by the consultant corrected the noted deficiencies to the satisfaction of the concerned department.

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- C. Indicate any unresolved problems with respect to the consultant's performance.
- D. Indicate whether any final payment or payment of retainage should be made, the amount (if any) of such payment that is approved by the department, and whether the department has imposed conditions upon payment because of deficiencies that warrant the withholding of all or any portion of the consultant's compensation.

6.30.050 Departmental Policy and Procedure Statements

In order to provide information to the public on the City's consultant contracting procedures, each department head shall file with the Construction and Consultant Contracting Division in the Department of Finance a Policy and Procedure Statement describing that department's internal policy and procedure for the implementation of SMC Ch. 3.114 and the General Rules for Consultant Contracting adopted by the Director of Finance.

6.30.060 Consultant Evaluation Committee Report to the Department of Finance

For consultant contracts costing \$37,000 or more, the department shall file with the Construction and Consultant Contracting Division in the Department of Finance (Mail Code: 14-08-03) a copy of the consultant evaluation committee report, immediately after contract execution, along with a copy of the consultant contract. Refer to Chapter 6.50 of these Rules for further details.

6.30.065 Contracts With Former City Employees

Any department that contracts with a former City officer or employee who terminated City office or employment within the last twelve (12) months shall promptly notify the Executive Director of the Seattle Ethics and Elections Commission about the agreement. Refer to Section 6.10.090 of these Rules for restrictions on contracting with former City employees.

Section 6.30.070
SUMMARY OF CONSULTANT CONTRACTING FILING REQUIREMENTS

File With	Documents to File (as applicable)	When to File
City Clerk	<ol style="list-style-type: none"> 1. Original signature copy of consultant contract and amendments. (See Section 6.30.010) 2. Performance Review and Evaluation Report (See Section 6.30.040) 	<p>Upon contract execution</p> <p>Within 30 days of contract expiration</p>
Construction and Consultant Contracting Division, Dept. of Finance (Mail Code: 14-08-03)	<ol style="list-style-type: none"> 1. Copy of signed consultant contract and amendments (See Section 6.30.020) 2. Consultant Evaluation Committee Report for all consultant contracts \$37,000 or more (See Section 6.30.060) 3. Equal Benefits Compliance Declaration form (for all contracts of \$37,000 or more) 4. Performance Review and Evaluation Report (See Section 6.30.040) 	<p>Upon contract execution</p> <p>With the contract, upon execution</p> <p>With the contract upon execution</p> <p>Within 30 days of contract expiration</p>
Administering Dept.	A copy of all of the documents listed above which have been submitted to either Department of Finance or City Clerk.	When documents are sent to Department of Finance or City Clerk

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Chapter 6.50
CONSULTANT SELECTION PROCEDURES
FOR CONTRACTS COSTING \$37,000 OR MORE

6.50.010 Applicability

Unless utilizing the City-wide Consultant Roster Program outlined in Chapter 6.75 of these Rules, all City departments, prior to selecting a consultant to provide services estimated to cost \$37,000 or more, shall comply with the selection procedures outlined in Chapter 6.50, as well as applicable provisions of other portions of these General Rules for Consultant Contracting.

Consultant selection procedures for the following types of consultant services have varying requirements as set forth in Chapter 6.70 of these Rules: Retainer basis contracts, accounting/auditing and management contracts, architectural contracts, landscape architectural contracts, land surveyor contracts, engineering contracts, federally funded contracts, capital improvement projects.

6.50.020 Solicitation Strategies for Consultant Services

It is in the City's best interests to ensure that adequate competition exists on consultant contracts to help ensure that the City is obtaining the best services available for the least money. To meet this objective, departments must develop solicitation strategies for consultant contracts consistent with the requirements below.

The requirements for solicitation strategies for consultant services vary depending on the dollar value of the consultant contract.

A. For Consultant Contracts of \$37,000 or more Departments must develop a solicitation strategy that indicates, at a minimum, that the following requirements and issues have been addressed:

1. Advertising. The department shall place advertisements in the Seattle Daily Journal of Commerce (the City's official newspaper) for a minimum of two days (not necessarily consecutive). The advertisement shall include at least the following minimum information:
 - a) A general description of the services sought for the specific project.
 - b) The name of the concerned department.
 - c) The name and telephone number of a representative of the department from whom additional information may be obtained.
 - d) An indication that the selection of the consultant is subject to applicable laws and ordinances regarding equal employment opportunity and affirmative action.

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- e) If established or known, the range of fees the department will consider paying the consultant for the services to be provided; the time within which such services are to be provided; and the anticipated beginning and completion dates of the work.
- f) The date by which the consultant must submit a formal written response to the concerned department in order to be eligible for consideration.

An advertisement for a contract that may include future phases must state that further work may be awarded as an amendment or supplement to the original contract, and should define and describe the type of work to be included in additional phases.

- 2. **Solicitation Process.** Departments must evaluate the advantages and disadvantages for each specific contract of whether to utilize a Request for Proposals (RFP) process, a Request for Qualifications (RFQ) process, or a combination of an RFQ and RFP process.
- 3. **Other Notifications.** In an effort to ensure that an adequate number of qualified consultants respond to the City's request for services, departments must include the following additional notification as part of the overall solicitation strategy:

Send a copy of either the advertisement or RFQ/RFP to all consultants known to the department who appear to be qualified for the work, including any WMBEs who appear to be qualified for the work.

- B. **For Consultant Contracts of \$250,000 or more** At a minimum, departments must comply with the solicitation requirements identified in section A above and shall indicate compliance with these requirements on the Contract Notification Form. (See Section 6.55.020 for information on the Contract Notification Form).

In addition, for consultant contracts estimated to cost \$250,000 or more, departments must evaluate whether additional solicitation strategies, as discussed below, are appropriate. Any additional solicitation strategies to be used by the department shall be listed on the Contract Notification Form (Appendix I).

The evaluation of whether additional solicitation strategies are appropriate must include an analysis of the market to determine the most effective means to ensure that an adequate number of qualified and competitive firms respond to the City's solicitation for consultant services. Specifically,

departments must evaluate, at a minimum, the following issues:

1. How many firms are available, qualified, and likely to respond to the solicitation for services based on the solicitation strategies required by Section A above?
2. If an inadequate number of firms are likely to respond, thus limiting the competition to an unacceptable level, the department must develop additional solicitation strategies to ensure adequate competition. These additional strategies may include, but are not limited to, advertising in the City's official newspaper for more than the required two days, and advertising in appropriate regional and national publications or trade journals. The most effective and appropriate solicitation strategies to employ will most likely vary significantly on a contract-by-contract basis.

It is the responsibility of each department to ensure that the solicitation strategies developed for each contract furthers the City's objective of ensuring adequate competition on consultant contracts.

6.50.040 Consultant Selection Criteria

Every Request for Proposal (RFP) or other material in which consultants are given detailed information about consultant services sought by a department shall include a detailed description of the evaluation criteria to be used, together with the maximum score or weighting to be given to each listed criterion.

The deadline for submittal of a proposal or other responsive material from a prospective consultant shall be included in the RFP or equivalent material.

SMC 3.114.040 requires that consultants shall be selected on the basis of, among other factors:

- A. Competence and qualifications for the type of services to be provided.
- B. Cost, price, compensation, or consideration to be paid by the City for such services.
- C. Affirmative Action/equal employment opportunity record of the consultant.

Consultant selection criteria for services of architects, landscape architects, land surveyors, and engineers must comply with Sections 6.70.040B and 6.70.040C of these Rules.

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6.50.050 Provision of Information to Consultant

Upon receipt of a consultant's timely request for further information, the department shall provide to the consultant all information to be made available to consultants pursuant to SMC 3.114.030, together with any other information made available to potential consultants in connection with such work.

6.50.060 Membership of Consultant Evaluation Committee

The department head shall appoint and utilize a Consultant Evaluation Committee consisting of at least three (3) members, and, where practical, representative of women and minorities. When applicable for capital improvement projects, consideration should be given to including a member(s) of the Seattle Design Commission, as a member or participant of the Consultant Evaluation Committee.

6.50.070 Duties of Consultant Evaluation Committee

The Consultant Evaluation Committee shall review the proposals, applications, questionnaires, and related material submitted by consultants interested in providing the particular service(s) sought by the department.

6.50.080 Investigation by Consultant Evaluation Committee

The Consultant Evaluation Committee shall, prior to making a recommendation, conduct any investigation it considers necessary to obtain full information on the consultants being considered. Such investigation may include, among other things, the following:

- A. Interviews with representatives of the consultant.
- B. Additional telephone conferences, if necessary, with representatives of the consultant.
- C. Letters of inquiry to the consultants and/or their clients requesting specific additional information, or looking into the consultant's past performances.
- D. Seattle Design Commission recommendations, when applicable for capital improvement projects, as required by SMC Ch. 3.58.

6.50.090 Recommendation of Consultant Evaluation Committee

The Consultant Evaluation Committee shall report its selection recommendations in writing to the concerned department head on the basis of the established specific written criteria. The report shall include:

- A. Where possible, the ranking of the top five consultants evaluated.
- B. Where appropriate, the lack of measurable differences among consultants evaluated.

- C. An explanation of the evaluation process used as is necessary to fully advise the department head of the Committee's evaluation results.

6.50.100 Filing of Consultant Evaluation Committee Report with the Department of Finance

A copy of the Consultant Evaluation Committee's evaluation report and recommendation (and a copy of the executed contract) shall be filed with the Construction and Consultant Contracting Division in the Department of Finance for public inspection.

6.50.110 Selection by Department Head

The department head shall make a selection, taking into consideration the report and recommendation of the Consultant Evaluation Committee. The recommendation of the Seattle Design Commission (as required by SMC Ch. 3.58) should be considered for capital improvement projects, when applicable.

If the department head determines not to accept the Committee's recommendation, he/she shall file with the Construction and Consultant Contracting Division in the Department of Finance a written justification describing the reasons for such determination.

The department head shall make a good faith effort to rotate contracts among equally qualified consultants.

6.50.120 Notice of Selection or Nonselection

Every department that receives a proposal or qualifications from a consultant to provide services for which the department has advertised in accordance with Section 6.50.020 of these Rules shall notify each such consultant, in writing, as to the final selection.

6.50.140 Exemptions from Consultant Selection Procedures

Consistent with the policy of the City Council and Mayor as outlined in SMC Ch. 3.114, department heads are accountable to the City Council, Mayor, and the general public for the integrity of the consultant selection process for consultants selected by his/her department. Department heads are authorized to waive the consultant selection provisions of Chapter 6.50 of these Rules under the following circumstances, consistent with the criteria for justification of consultant selection waiver decisions outlined in A through C below.

The justification must provide sufficient information in response to the criteria outlined to demonstrate that a careful and comprehensive review occurred prior to the waiver of the consultant selection procedures. In order to ensure that all of the issues indicated below are covered in the justification, departments may use the checklist included in Section 6.50.150 of these Rules, incorporate the checklist into a department specific checklist, or address the criteria indicated below in a memorandum or letter.

The filing requirements indicated in this section of the Rules also apply to any amendment to a consultant contract for which the consultant was selected based on one of the consultant selection exemptions listed below.

As documentation of such a waiver, the department head shall file a written justification addressed to the Director of the Construction and Consultant Contracting Division in the Department of Finance (Mail Code: 14-08-03) as soon as practicable. Justification for sole source waivers shall be filed with the Construction and Consultant Contracting Division at least 24 hours in advance of execution of any agreement committing the City to pay for such services.

The Director of the City Budget Office shall annually review the justifications for exemptions to the consultant selection process to ensure that they justification is consistent with the guidelines as set forth in this section of the Rules.

- A. **Emergency.** Whenever the consultant selection provisions of these Rules would adversely affect the City's interests because of an emergency, as determined by the head of the department desiring consultant services, the consultant selection procedures may be waived.

Criteria. The written justification must provide information on the following factors:

1. The dollar amount of the contract and a statement of the scope of work and the tasks to be performed by the consultant.
2. An explanation of the emergency situation requiring waiver of the consultant selection procedures. The emergency explanation should also include a chronology of events leading up to the emergency.
3. An explanation of the alternatives to an emergency consultant contract which were considered by the department, and why each alternative was rejected.
4. A statement indicating whether the department anticipates any amendment to the contract, including the potential scope of work and estimated dollar value of additional work.
5. A description of the steps taken to identify other qualified consultants to perform the work, and an explanation of the rationale for selecting the consultant who was awarded the contract.
6. A statement of a.) whether a current or former City employee (who left City employment within the last twelve months) will be involved with the contract as the consultant, a sub-consultant, or an employee of either the consultant or a sub-consultant, and if so, an evaluation of whether the contract complies with the provisions of the City's Code of Ethics (SMC Ch. 4.16) and Sections 6.10.080 and 6.10.090 of these Rules; b.) whether any City officer or employee who will be involved in the contract has a business interest or family relationship with the consultant or an employee of the consultant, and if so, an evaluation of whether the City officer or employee is in compliance with Section 6.10.100 of these Rules; c.) whether the services to be provided are

prohibited as a consultant service under Section 6.10.110 of these Rules.

- B. **Adverse Effect.** Whenever the consultant selection provisions of these Rules would adversely affect the City's interests because, in the judgment of the department head, of a particular aspect of the services to be provided or the need therefor that would be compromised by compliance with such provisions, the consultant selection procedures may be waived. Circumstances in which this might occur, include but are not limited to, the need to perform a confidential or surprise security review or evaluation or an anonymous management audit, or a determination that the cost, ability to complete the task in a timely manner, or potential liability issues related to having another consultant perform the work would not be in the City's best interests.

Criteria. The written justification must provide information on the following factors:

1. The dollar amount of the contract and a statement of the scope of work and the tasks to be performed by the consultant.
2. An explanation of the adverse effect to the City that warrants a waiver of the normal consultant selection procedures.
3. An explanation of the alternatives to declaring an exemption from the normal consultant selection procedures which were considered by the department, and why each alternative was rejected.
4. A statement indicating whether the department anticipates any amendment to the contract, including the potential scope of work and estimated dollar value of additional work.
5. A description of the steps taken to identify other qualified consultants to perform the work, and an explanation of the rationale for selecting the consultant who was awarded the contract.
6. A description of the qualifications and experiences of the consultant selected to perform the work.
7. A description of the steps the department took to ensure that the contract's compensation is reasonable.
8. A statement of a.) whether a current or former City employee (who left City employment within the last twelve months) will be involved with the contract as the consultant, a sub-consultant, or an employee of either the consultant or a sub-consultant, and if so, an evaluation of whether the contract complies with the provisions of the City's Code of Ethics (SMC Ch. 4.16) and Sections 6.10.080 and 6.10.090 of these Rules; b.) whether any City officer or employee who will be involved in the contract has a business interest or family relationship with the consultant or an employee of the consultant, and if so, an evaluation of whether the City officer or employee is in compliance with Section 6.10.100 of these Rules; c.) whether the services to be provided are prohibited as a consultant service under Section 6.10.110 of these Rules.

No adverse effect exemption for architectural and engineering contracts. Department heads should be aware that Chapter 39.80

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RCW, which governs the selection of architects, engineers, landscape architects, and land surveyors, does not contain provisions for waiving established consultant selection procedures based on a determination of adverse effect to the City.

- C. **Sole Source.** Whenever it can be established to the satisfaction of the department head contracting for consultant services, that only one consultant is available with the expertise required to provide the services desired (i.e., sole source), the consultant selection procedures may be waived.

Criteria. The written justification must provide information on the following factors:

1. The dollar amount of the contract and a statement of the scope of work and the tasks to be performed by the consultant (with special attention paid to the uniqueness of the work to be performed).
2. An explanation of why only one consultant can perform the task and what are the unique and specific qualifications and experiences of the sole source consultant that make them the only available consultant.
3. A description of the steps taken by the department to identify other qualified consultants to perform the work.
4. An explanation of why other consultants who might appear to be viable consultants were not considered for the contract.
5. A description of the steps the department took to ensure that the contract's compensation is reasonable.
6. An assessment of in-house capability and availability to perform the work.
7. A statement indicating whether the department anticipates any amendment to the contract, including the potential scope of work and estimated dollar value of additional work.
8. A statement of a.) whether a current or former City employee (who left City employment within the last twelve months) will be involved with the contract as the consultant, a sub-consultant, or an employee of either the consultant or a sub-consultant, and if so, an evaluation of whether the contract complies with the provisions of the City's Code of Ethics (SMC Ch. 4.16) and Sections 6.10.080 and 6.10.090 of these Rules; b.) whether any City officer or employee who will be involved in the contract has a business interest or family relationship with the consultant or an employee of the consultant, and if so, an evaluation of whether the City officer or employee is in compliance with Section 6.10.100 of these Rules; c.) whether the services to be provided are prohibited as a consultant service under Section 6.10.110 of these Rules.

No sole source exemption for architectural and engineering contracts. Department heads should be aware that Chapter 39.80 RCW, which governs the selection of architects, engineers, landscape architects, and land surveyors, does not contain provisions for waiving established consultant selection procedures based on a determination of a sole source provider.

Chapter 6.55
EXECUTIVE AND LEGISLATIVE OVERSIGHT
FOR CONSULTANT CONTRACTS

6.55.010 For Consultant Contracts less than \$250,000

For consultant contracts estimated to cost less than \$250,000, these Rules contain no formal requirements for notifying the City Budget Office (CBO) or briefing CBO and the City Council. However, department heads are strongly encouraged to consider:

—Notifying CBO of consultant contracts less than \$250,000 (Section 6.55.020 of these rules), and

—Briefing CBO and the City Council for consultant contracts less than \$750,000 (Section 6.55.030 of these rules)

whenever a consultant contract deals with a highly visible project, is politically sensitive, or when the department is intending to declare an exemption from the normal consultant selection process based on sole source, emergency, or adverse effect.

6.55.020 For Consultant Contracts of \$250,000 or more

The City Budget Office (CBO) has an interest in being notified and kept informed of the progress of large consultant contracts, specifically those estimated to cost \$250,000 or more.

A. Notification. In order to facilitate notification to CBO of large consultant contracts, departments are required to submit to CBO a completed Contract Notification Form (Appendix I) for all consultant contracts estimated to cost \$250,000 or more.

1. When to submit form. The form should be completed by departments early in the planning stages of the contract, and before any formal solicitation or advertising for the services has occurred.
2. Where to submit form. The form should be sent to the department's budget analyst in CBO.
3. How to submit form. Departments may use the Contract Notification Form included as an appendix to these Rules, may incorporate all the content of the form into a department specific form, or provide the information required by the form in a memorandum or letter. To facilitate consistency, the information must be submitted in the same order as listed on the form.

Note: Department heads are strongly encouraged to consider:

—Notifying CBO of consultant contracts less than \$250,000 (Section 6.55.020 of these Rules), and

—Briefing CBO and the City Council for consultant contracts less than \$750,000 (Section 6.55.030 of these Rules) whenever a consultant contract deals with a highly visible project, is politically sensitive, or when the department is intending to declare an exemption from the normal consultant selection process based on sole source, emergency, or adverse effect.

- B. Amendments.** The Amendment Notification Form shall be submitted by departments for consultant contract amendments or supplements which will raise the estimated cost of the contract (original contract plus all amendments or supplements) to \$250,000 or more, or for any single amendment or supplement estimated to cost \$250,000 or more. The Amendment Notification Form should be submitted to CBO as soon as the need for the amendment becomes apparent.

Departments may use the Amendment Notification Form included in Section 6.55.050 of these Rules, may incorporate all the content of the form into a department specific form, or provide the information required by the form in a memorandum or letter. To facilitate consistency, the information must be submitted in the same order as listed on the form.

6.55.030 For Consultant Contracts of \$750,000 or more

Both CBO and the City Council have a special interest in consultant contracts estimated to cost \$750,000 or more, since these contracts commit the City to significant expenditures of public funds. Therefore, in addition to the notification requirements outlined in Section 6.55.010 of these Rules, the department head is required to brief CBO and offer a briefing to the appropriate City Council committee chair for all consultant contracts estimated to cost \$750,000 or more, as described below.

Briefing. Upon submittal of a Contract Notification Form, the department must contact CBO in order to schedule a briefing on the proposed consultant contract. The briefing must include a discussion of the issues addressed in the Contract Notification Form including a description of the solicitation strategies that the department has developed to ensure that there is adequate competition for the contract. Department heads are encouraged to schedule the briefings early in the development of the consultant contracting process. It is expected that the department and CBO will work together collaboratively in determining the best approach for proceeding with the consultant contract. The department head shall evaluate and consider modifying the proposed contracting process based on the review and analysis by CBO.

After the briefing and review by CBO, the department head is encouraged to forward to the appropriate City Council committee chair a copy of the Contract Notification Form or other information about the contract, and shall offer to brief the appropriate City Council committee chair.

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The briefing requirements of this section also apply to:

- A. Any consultant contract amendment or supplement estimated to cost \$750,000 or more.
- B. Any consultant contract amendment or supplement that causes the total dollar value of the contract (original contract plus all amendments and supplements) to equal or exceed \$750,000.

Note: Department heads are strongly encouraged to consider:

—Notifying CBO of consultant contracts less than \$250,000 (Section 6.55.020 of these Rules), and

—Briefing CBO and the City Council for consultant contracts less than \$750,000 (Section 6.55.030 of these Rules) whenever a consultant contract deals with a highly visible project, is politically sensitive, or when the department is intending to declare an exemption from the normal consultant selection process based on sole source, emergency, or adverse effect.

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Chapter 6.60 NEGOTIATIONS AND CONTROLLING CONTRACT COSTS

6.60.010 General Background

The following reflect some of the broad, overall issues addressed in this chapter:

- A. Know the project. In negotiating with consultants, it is important that the City know what work needs to be done, how much it is likely that such work will cost, and that the amount the City agrees to pay the consultant is reasonable, fair, and appropriate. Thus, the City should develop an independent scope of work and cost estimate prior to the negotiation process with the consultant.
- B. Document negotiation process. As a good management practice and from the public's perspective, it is also important that the City be able to demonstrate that negotiations with the consultant occurred that protected the City's interests. Thus, the need arises for reasonable documentation of the negotiations process and for maintaining that information in contract files.
- C. Ensure payment is consistent with contract terms. Finally, it is important that the City review invoices to ensure that the payments to the consultant are consistent with the terms of the contract.

6.60.015 Selective Audit Responsibilities of the Department of Finance

The Department of Finance will conduct selective audits of consultant contracts and amendments executed by administering departments to verify that departments are complying with Sections 6.60.020 (Development of Independent Scope of Work and Cost Estimate) and 6.60.050 (Documentation of Negotiations).

6.60.020 Development of Independent Scope of Work and Cost Estimate

The City has an interest in ensuring that its financial interests are adequately protected, the City is not unreasonably dependent upon a consultant, and the City has a clear understanding of proposed work to be accomplished through a contract or amendment.

- A. Consultant Contracts: For every consultant contract estimated to cost \$250,000 or more, the administering department shall develop its own draft of the proposed scope of work and an independent cost estimate prior to the negotiation process, to ensure the reasonableness of the consultant's negotiating proposals and positions.
- B. Consultant Amendments: For every consultant amendment estimated to cost \$250,000 or more, the administering department shall conduct or obtain an independent review of any scope of work developed by the consultant, and an independent review of the cost estimate provided by the consultant, in order to ensure reasonableness of both scope and estimates. The independent

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review of the scope and cost may be conducted by qualified staff in the administering department or another City department, or through an independent, outside expert.

- C. **Documentation:** The administering department shall maintain records demonstrating its compliance with the requirements of this section.
- D. **Justification for non-compliance with this Section:** If an administering department is unable to comply with some or any of the requirements of this section, the department shall document in its contract files the reasons for its inability to comply.

6.60.030 Indirect Costs (Overhead and Fringe Benefits)

This section applies only to consultant contracts using a cost-plus fixed fee payment methodology.

Indirect costs are normally recovered by consultants as a percentage of direct salary costs, and consist of non-salary related indirect costs (overhead) and salary related indirect costs (fringe benefits).

A. **Definitions:**

1. **Overhead.** An indirect rate covering costs of the consultant that cannot be allocated to a specific contract and is generally reimbursed as a percentage of the base salary costs.
2. **Fringe Benefits.** An indirect rate covering costs associated with employees above and beyond salaries and generally reimbursed as a percentage of the base salary costs (i.e., reasonable sick leave, vacation and holiday pay, unemployment compensation insurance (UIA), retirement contributions, medical insurance, etc.).

B. **Notification to Consultants:** For all cost-plus fixed fee or other consultant contracts that require use of indirect rates, the administering department shall:

1. Provide to the consultant the list of allowable and unallowable indirect rates defined in Section 6.60.030 D and E of these Rules.
2. Inform the consultant that the City will only pay indirect rates consistent with Section 6.60.030 D and E of these Rules.
3. Inform the consultant that they are responsible for only billing the City for allowable indirect rates.
4. Inform the consultant that charges to the City may be audited by the City Auditor or designee and are subject to adjustment based on an audit.

C. **Overhead Expenses.** The following are categories of costs generally allowed or disallowed as overhead as part of the compensation for City consultant contracts. The lists are not exhaustive. Costs are subject to audit for allowability based on contract terms, generally accepted accounting principles, reasonableness, documentation, and

allocability to the proper base. The Federal Acquisition Regulations shall be used as the definitive standard for allowable versus unallowable costs. Costs should have a basis in the company's established policy, plans or practices. Costs should not be discriminatory against the City. Exceptions may be allowable if fully documented and justified.

For further information, refer to Subpart 31.2 of the Federal Acquisition Regulation, as of June 1997. A full text version of the Federal Acquisition Regulations may be found at the following Internet Website address: <http://www.amet.gov/far>.

D. Categories Of Costs Allowed Indirectly In Overhead Rates

1. **Employee Compensation: Wages and Salaries, Incentive bonuses, Funded deferred compensation, Funded retirement, pension and savings plans, Health and most life insurance benefits, Compensated personal absence benefits, Normal severance pay allowances.**
2. **Lodging, meals and incidental expenses: Not directly reimbursed and incurred by the firm's employees on official business. Costs generally should not exceed the rates provided in the Runzheimer "Meal and Lodging Cost Index." Related transportation costs should be at the lowest customary standard.**
3. **Local transportation for company business: Personal vehicles at rates not to exceed federal Internal Revenue Service mileage rates and documented by mileage logs. Costs of company owned or leased vehicles.**
4. **Utilities.**
5. **Depreciation acceptable for Federal income tax purposes.**
6. **Trade, business, technical and professional costs.**
7. **Direct selling.**
8. **Most professional and consultant services.**
9. **Most business insurance.**
10. **Most legal expenses: If the result is in favor of the firm.**
11. **Amortization, cost of money, and depreciation amounts: For asset valuations resulting from business combinations up to the total which would have been allowed if the combination had not taken place; assumes purchase method of accounting.**
12. **Certain realized post-retirement benefits.**
13. **Training and education costs for the business.**
14. **Most employee relocation costs.**
15. **Rental and lease costs up to the normal cost of ownership.**
16. **Maintenance and repair except depreciable expenses.**
17. **Material and supplies adjusted for discounts and credits.**
18. **Market planning.**
19. **Bid and proposal costs.**
20. **Bonding costs.**
21. **Most business taxes except federal income and excess profits.**
22. **Facilities capital cost of money.**

E. Costs Not Allowed Directly Or Indirectly

1. Charity and contributions.
2. Office parties.
3. Entertainment and club memberships.
4. Most advertising except normal recruiting.
5. Research, development and engineering for new products.
6. Federal income or excess profits taxes and accruals.
7. Officer's life insurance.
8. Employee dependent education plans.
9. Use of vehicles and equipment for personal purposes.
10. Bad debts.
11. Costs related to mischarging on contracts.
12. Interest and other financial expenses.
13. Political contributions.
14. Costs related to improper business practices: Conflicts of interest and many contract-related or other legal defense costs where the result was against the company or settlement was in lieu of a result against the company.
15. Portions of allowances for unfunded pension costs.
16. Certain advance payments for pension plans.
17. Goodwill costs: Amortizing, expensing, write-off, write down.
18. Some costs related to changes in plans such as pension plans.
19. Expenses directly associated with unallowable costs.
20. Expenses related to costs already recovered.
21. Gifts, memorabilia, models, mementos to customers or public.
22. Alcohol or alcoholic beverages, tobacco, illegal substances.
23. Memberships in civic and community organizations.
24. Public relations costs: For enhancing the image of the firm or generally promoting the sale of services, e.g. trade shows, special events, and promotional material.
25. Most contingencies.
26. Officer/owner/partner salary and bonuses which represent a distribution of profits.
27. Costs related to poaching the employees of others.
28. Employee rebates and purchase discounts.
29. Losses on contracts and net business losses.
30. Most costs of idle facilities and idle capacity.
31. Legislative and executive lobbying costs.
32. Fines and penalties for violations of laws and regulations.
33. Normal costs of pension plans not funded in the year incurred except for certain ERISA waivers.
34. Certain post-retirement benefits other than pensions.
35. Late premium charges on insurance, pension or other plans.
36. Organization, reorganization and financial structure changes.
37. Retroactive or backdated accounting adjustments.

6.60.040 Evaluation of Fixed Fee or Profit

In negotiating a contract or amendment on a cost-plus fixed fee basis, the City considers a reasonable fixed fee range to be 10—13% (of the consultant's total labor costs including base salary rate, overhead, and fringe

benefits). In negotiating a fixed fee, the administering department should take into consideration the following factors, and others that may be relevant:

- A. The level of risk involved in the work to be performed. Generally, the City should expect to pay a lower fixed fee for routine, low risk work, while unique or high risk work may warrant the payment of a higher fixed fee to compensate the consultant for the work.
- B. The fixed fee paid to other consultants by the City for similar types of work.
- C. The fixed fee paid to consultants for similar types of work by other large government agencies.

If the administering department negotiates a fixed fee that is above the 10—13% range, documentation shall be maintained in its contract files explaining why.

6.60.050 Documentation of Negotiations

The intent of this section is to ensure that a public record exists of the negotiating process on a contract or amendment valued at \$250,000 or more. This public record or documentation is important in order to demonstrate that the City has negotiated compensation terms for a contract or amendment that are fair and reasonable.

In addition to items described in other sections of this chapter, the documentation in the contract files shall include a written narrative summary of the negotiation process describing how the contract negotiations resolved any differences between the consultant's cost proposal and the department's estimates (for contracts of \$250,000 or more) or the department's evaluation of the consultant's proposal (for amendments of \$250,000 or more). The level or standard of such documentation in the contract files shall be sufficient for, and acceptable to, the head of the administering department.

6.60.060 Review of Invoices

In order to ensure that the City's payments to a consultant are consistent with the terms of the contract, administering departments shall review all invoices submitted by a consultant prior to authorizing payment. For all consultant contracts valued at \$250,000 or more (including any amendments that bring the total amount to \$250,000 or more), and to all invoices for \$10,000 or more (regardless of contract dollar amount), the review of invoices by administering departments shall include, but not be limited to, verification of the following:

- A. That the figures included on the invoice have been accurately calculated.
- B. That the labor rates, reimbursables, fixed fee, sub-consultant's rates, overhead and fringe benefits listed on the invoice are consistent with the terms of the contract or the most recent applicable amendment.
- C. That the charges included on the invoices reflect activity for which the consultant has actually performed work.

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- D. That the charges included on the invoice are for work included in the contract or an amendment.
- E. That for sub-consultant activity, the sub-consultant is recognized by the department as a legitimate sub-consultant for the contract or amendment.
- F. That for any reimbursable expense exceeding \$250 supporting documentation is attached to the invoice.
- G. That any reimbursable expense claimed is permitted by the terms of the contract.

Each department shall develop invoice processing procedures consistent with the above review criteria that will document the internal process for invoice review and which positions are responsible for performing the invoice review and authorizing payments. Such procedures shall be submitted to the City Auditor for review and comment.

It is recognized that some consultants' invoices may require more or less review depending on the department's historical experience in evaluating invoices submitted by that consultant. In such cases, departments may develop more selective invoice review procedures, as long as they submit the procedure to the City Auditor for review and comments. If a more limited invoice review process is accepted, the administering department may be asked to provide documentation that demonstrates that continued review of all invoices is unlikely to generate significant cost savings to the City when compared with the cost of reviewing the invoices.

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Chapter 6.62
CONSULTANT SELECTION FOR AMENDMENTS

6.62.010 **General Provisions**

Any amendment or modification to a consultant contract which, together with the original contract and any subsequent amendments, commits the City to pay for services estimated to cost \$37,000 or more, must comply with the consultant selection requirements of Chapter 6.50 of these Rules (Consultant Selection Procedures for contracts costing \$37,000 or more). This requirement is not applicable if the normal consultant selection procedures outlined in Chapter 6.50 of the Rules were followed in the selection of the consultant for the original contract.

6.62.020 **Selection of Consultants for Amendments**

If a consultant contract for less than \$37,000 is amended to \$37,000 or more due to unanticipated circumstances, and the normal selection procedures outlined in Chapter 6.50 were not utilized by the department for the original contract, the department must comply with one of the following procedures, as appropriate:

- A. Select the consultant for the amendment only after the normal selection procedures outlined in Chapter 6.50 have been followed for the amendment, OR,
- B. Declare an exemption to the normal consultant selection procedures as outlined in Section 6.50.140 of these Rules.

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Chapter 6.65
AMENDMENTS TO CONSULTANT CONTRACTS

6.65.010 Purpose

These Rules address the following:

- A. Define the types of amendments that are normally considered appropriate and within the original scope of a contract.
- B. Define the types of amendments that are normally considered to be out of the original scope of the contract.
- C. Establish a review role for the Department of Finance for any consultant amendment that cumulatively with other amendments equals or exceeds \$250,000, and which also exceeds \$50,000.

While it is recognized that legitimate amendments do occur on consultant contracts, it must also be recognized that amendments are not always the appropriate vehicle to be used. Each amendment must be evaluated on a case-by-case basis because the Rules do not address all potential circumstances. It is expected that departments will exercise good judgment in determining whether a potential amendment is appropriate. The Rules are not intended to be used as a legalistic check-list but to provide some basic guidance and philosophy on issues that should be considered in determining whether an amendment is appropriate, legal, and in the public's best interests. The sections on "Appropriate Uses of Amendments" and "Amendments Outside the Original Scope of the Contract" must be read together in making a determination as to the most appropriate course of action to pursue for accomplishing additional work.

6.65.020 Policy

As outlined in SMC Ch. 3.114, the City of Seattle has a strong policy encouraging competitive selection of consultants. This is an important public policy objective for a number of reasons. First, competitive selection processes generally offer the best environment to ensure that the City is receiving the most value for its money. In addition, competitive selection processes provide the opportunity for all members of the consultant community to participate in the City's contracting process, and thus, for many contracts, offers opportunities for WMBEs and other small businesses to contract with the City. The practice of competitively selecting consultants for work, instead of adding work by amendment to an existing contract, reduces the potential for time-consuming protests from the consultant community, which has an expectation that the City will be open and fair in the selection of consultants to perform the work. Department heads will be held accountable to the Mayor, City Council, and the general public for ensuring the integrity of the City's consultant contracting amendment process.

6.65.030 Department of Finance Role

On any consultant contract amendment that cumulatively with other amendments equals or exceeds \$250,000, and which also exceeds \$50,000, the Department of Finance has the following responsibilities:

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- A. Review the scope of work of the amendment to determine if the work is within or outside the original scope of the contract. The Department of Finance will complete such review within five business days of receipt of the scope of work of the amendment and the completed "Review of Consultant Amendment" form (Appendix G).
- B. If the Department of Finance determines that the work of the amendment is outside the original scope of the contract, the issue will be discussed with the administering department.
- C. If, after such discussions, the Department of Finance continues to believe that the work is outside the original scope of the contract and the administering department still believes it is in the best interests of the City to execute the amendment, the Department of Finance shall promptly send a report of its findings on the amendment to the administering department head, the Mayor, and the City Council committee chair with oversight responsibility for that department.
- D. The administering department is authorized to execute the amendment without waiting for Department of Finance review, opinion, and report.

In addition, the Department of Finance will conduct selective audits of consultant amendments to determine the compliance of departments with these Rules.

6.65.040 Appropriate Uses of Amendments

The following criteria, while not all inclusive, are intended to provide a general overview of the types of amendments that are normally considered to be within the scope of work of the original contract and appropriate for use on a consultant contract. As with any criteria, there are exceptions, and individual amendments must be evaluated on a case-by-case basis. Departments are expected to exercise good judgment and common sense in evaluating whether a particular amendment is appropriate.

- A. Additional work is of the same type and substance as described in the original contract.
- B. Unforeseen conditions related to the original scope of work are encountered.
- C. Compensation for delays related to the original scope of work.
- D. Additional work or phases that are identified in the original advertisement or RFQ and/or RFP as potential work that may be added by amendment.
- E. Changes that constitute a natural and logical progression of the original scope of work and do not constitute a new project.
- F. Additional work that is part of a contract with planned phases that were contemplated in the original solicitation for services.

- G. Additional work that does not cumulatively exceed 10% of the original contract amount that is necessary to respond to community, business, or neighborhood concerns.

6.65.050 Amendments Outside the Original Scope of the Project

The following criteria, while not all inclusive, are intended to provide a general overview of the types of work that are normally considered to be outside the original scope of a consultant contract and thus such work should not be included in amendments. As with any criteria, there are exceptions, and individual amendments should be evaluated on a case-by-case basis. Departments are expected to exercise good judgment and common sense in evaluating whether a particular amendment is appropriate. The higher the dollar value and percentage increase of the amendment, the more caution is required in evaluating the appropriateness of adding the work by amendment instead of executing a separate contract.

- A. Additional work is of the same type and substance as described in the original contract, but is work for which a consultant should be competitively selected because of the magnitude or nature of the additional work.
- B. Additional work is of a substantially different type and nature from the work described in the original contract.
- C. Additional work that other consultants would not have reasonably anticipated and which could have impacted which consultants expressed interest in the contract had they known about the additional work to be added by amendment.
- D. Changes to the original scope of work that change the basic character or nature of the contract so that it is essentially a new contract and not just a modified contract.
- E. Significant additional work for which a separate consultant could have been competitively selected without negatively impacting the original contract scope of work.

Chapter 6.70
CONSULTANT SELECTION REQUIREMENTS FOR
SPECIALIZED CONTRACTS

6.70.010 Retainer Basis Contracts

Departments shall not contract with any consultant for the performance of services on a retainer basis (whether for a term of years, or from year-to-year, or on another successive arrangement) for more than five consecutive years. This restriction shall not apply to:

- A. A contract for services in connection with a particular project or activity although completion of the assignment may extend for more than five years.
- B. A retainer agreement used to establish eligibility for placement on a roster from which consultants are selected from time to time for particular assignments.
- C. An agreement implementing a deferred compensation plan for City employees as contemplated by 26 USC §457.

6.70.020 Accounting/Auditing and Management Consulting Contracts

No consultant shall be retained to perform accounting or auditing services and to provide management consulting services for the same department at or about the same time. One year after completion of such services for a department, a consultant, who provided either accounting or auditing services, shall become eligible to contract for management consulting services, and a consultant who provided management consulting services, shall become eligible to contract for accounting and/or auditing services.

6.70.030 City Auditor's Role in All Accounting/Auditing Service Contracts

The City Auditor shall participate in the selection of all consultants providing auditing and accounting services in accordance with a memorandum of understanding entered into between the City Auditor and the Executive Department. The affected City department may determine the terms and conditions of the agreement, but any such agreement shall be subject to review by the City Auditor. All reports or financial statements submitted by such consultants shall be submitted to the City Auditor and the Director of Finance, as well as the affected department.

6.70.040 Selection Procedures for Services of Architects, Landscape Architects, Land Surveyors, and Engineers

Chapter 39.80 RCW contains specific procedures to be used in the selection of the following types of consultants, regardless of the estimated cost of the contract: architects, landscape architects, land surveyors, and engineers. The requirements of Sections 6.70.040, 6.70.040A, 6.70.040B, 6.70.040C and 6.70.040D of the Rules should, when applicable, be read and considered together with the selection procedures outlined in Chapter 6.50 of the Rules.

6.70.040A Advertisement for Services

- A. For consultant contracts with architects, landscape architects, land surveyors, and engineers estimated to cost less than \$37,000, departments must publish an advertisement regarding the department's requirement for such services. The advertisement shall, at a minimum, state concisely the general scope and nature of the project or work and the address of a representative of the department who can provide further details.

Departments may comply with the advertising requirements of Chapter 39.80 RCW by either of the following approaches:

1. Publish an advertisement on each occasion when such services are required.
2. Publish an advertisement of its projected requirements for any category or type of professional services. If the solicitation advertisement for the City-wide Consultant Roster Program included the type of service required by the department, then the advertisement for the Consultant Roster Program would meet the advertising requirement outlined in this section.

As an alternate to the above referenced advertising requirements, departments may comply with the advertising requirements of Section 6.50.020 of these Rules.

- B. For consultant contracts with architects, landscape architects, land surveyors, and engineers estimated to cost \$37,000 or more departments must comply with the advertising requirements of Section 6.50.020 of these Rules.

6.70.040B Consultant Selection Criteria

For consultant contracts with architects, landscape architects, land surveyors, and engineers, regardless of cost, any written material descriptive of the desired services (such as the request for proposals) shall include a detailed description of the evaluation criteria to be used together with the maximum score or weighting to be given to each listed criterion. Chapter 39.80 RCW requires a selection of the "most highly qualified" consultant. The evaluation criteria must be limited to factors which relate to a firm's qualifications and competence to perform the desired work and may not include factors related to the affirmative action/ equal employment opportunity record of a firm or to the cost, price, compensation, or other consideration to be paid for the services.

6.70.040C Determining the Applicability of Chapter 39.80 RCW

- A. General: Because price may not be used as a criterion for consultant selection of architects, landscape architects, land surveyors, and engineers, it is important to distinguish between professions that are covered by Chapter 39.80 PCW and those that are not covered by it. It is to the City's advantage to use price as one

criteria for selection of consultants when permitted. This helps to ensure that the City is obtaining the most value for its money and represents good public policy.

The following is intended to provide guidance to departments in making a determination as to whether a specific contract is for one of the professions cited in State law. If a department is unsure about whether a particular service must be performed by one of these professions, please read the complete sections in State law noted below regarding the practice of that profession, or contact the Construction and Consultant Contracting Division in the Department of Finance or the Law Department for advice.

- B. **Issues to Consider in Making a Determination:** The general answer in distinguishing between work subject to the requirements of Chapter 39.80 RCW and work that is not subject to the requirements of Chapter 39.80 RCW is that if State law does not require that the work in question be performed by someone licensed or registered in one of these professions, then Chapter 39.80 RCW does not apply. If, on the other hand, State law requires that the work in question be performed by someone licensed or registered in one of these four professions, then Chapter 39.80 RCW would be applicable.

However, just because the scope of services for a particular contract is likely to be performed by, or may be performed by, someone who is licensed or registered in one of these four professions does not mean that Chapter 39.80 RCW applies. In order for Chapter 39.80 RCW to apply, the type of service the City is seeking must be required by State law to be performed by someone licensed or registered in one of these four professions. As an example, if the design of something requires the stamp of a licensed engineer, then the work must be performed by an engineer.

- C. **Architecture:** The term "practice of architecture" means the rendering of services in connection with the art and science of building design for construction of any structure or grouping of structures and the use of space within and surrounding the structures or the design for construction of alterations or additions to the structures, including but not specifically limited to schematic design, design development, preparation of construction contract documents, and administration of the construction contract. (RCW 18.08.320(10))
- D. **Engineering:** The term "practice of engineering" within the meaning and intent of this chapter shall mean any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects.

A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this chapter, who

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practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself or herself to be a professional engineer, or through the use of some other title implies that he or she is a professional engineer; or who holds himself or herself out as able to perform, or who does perform, any engineering service or work or any other professional service designated by the practitioner or recognized by educational authorities as engineering. The practice of engineering shall not include the work ordinarily performed by persons who operate or maintain machinery or equipment. (RCW 18.43.020 (5))

- E. **Land Surveying:** The term "practice of land surveying" within the meaning and intent of this chapter, shall mean assuming responsible charge of the surveying of land for the establishment of corners, lines, boundaries, and monuments, the laying out and subdivision of land, the defining and locating of corners, lines, boundaries and monuments of land after they have been established, the survey of land areas for the purpose of determining the topography thereof, the making of topographical delineations and the preparing of maps and accurate records thereof, when the proper performance of such services requires technical knowledge and skill. (RCW 18.43.020 (9))
- F. **Landscape Architecture:** "Landscape architect" means a person who engages in the practice of landscape architecture as hereinafter defined. A person practices landscape architecture within the meaning and intent of this chapter who performs for hire professional services such as consultations, investigations, reconnaissance, research, planning, design or teaching supervision in connection with the development of land areas where, and to the extent that, the dominant purpose of such services is the preservation, enhancement, or determination of proper land uses, natural land features, ground cover and planting, naturalistic and aesthetic values, the settings and approaches to structures or other improvements, or natural drainage and erosion control. This practice shall include the location, design, and arrangement of such tangible objects as pools, walls, steps, trellises, canopies, and other nonhabitable structures, and such features as are incidental and necessary to the purposes outlined herein. It involves the design and arrangement of land forms and the development of outdoor space including, but not limited to, the design of public parks, playgrounds, cemeteries, home and school grounds, and the development of industrial and recreational sites. (RCW 18.96.030)

6.70.040D Evaluation and Selection

For consultant contracts with architects, landscape architects, land surveyors, and engineers the department shall evaluate the proposals, applications, questionnaires, statements of qualifications, performance data, and other submitted material relating to the firm's desires and abilities to perform the desired services; and where such services are estimated to cost \$37,000 or more, a consultant evaluation committee shall conduct the evaluation as required by Chapter 6.50 of these Rules. Representatives of the department shall conduct discussions with one or more firms regarding each such firm's anticipated concepts and the relative utility of alternate methods of approach for furnishing the desired services.

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After full consideration of the recommendations of any consultant evaluation committee used in connection with such selection process, the department head shall select the most qualified firm based upon the selection criteria described in Section 6.70.040B.

6.70.050 Federally Funded Contracts

Departments must comply with applicable federal regulations, including the "Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments," for consultant contracts funded in whole or in part by federal monies. Departments must also comply with requirements imposed by the federal agency granting the funding.

6.70.060 Capital Improvement Projects

Departments must comply with the requirements of the Seattle Design Commission Ordinance (SMC Ch. 3.58) regarding selection of consultants for capital improvement projects.

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Chapter 6.75 CONSULTANT ROSTER PROGRAM

6.75.010 Background

In July 1985, the City Council passed Ordinance No. 112334 which amended both the Consultant Selection Ordinance (SMC Ch. 3.114) and the WMBE Ordinance (SMC Ch. 20.46) to authorize a Consultant Roster Program. The Consultant Roster Program authorizes City departments, through the City's consultant selection process, to select groups of qualified consultants for specific categories of services and to contract with those consultants as work is identified, without having to advertise for each specific project.

In December 1987, the City Council approved Ordinance No. 113797 which made certain changes to the Consultant Roster Program. In April 1995, the City Council further amended SMC Ch. 3.114 by passing Ordinance 117583 which authorizes a City-wide selection process for the Consultant Roster Program, and in September 1999, the City Council further amended SMC Ch. 3.114 by passing Ordinance 119551 which, in part, changed the City-wide Consultant Roster Program from a closed to an open roster, allowing firms to apply at any time, and eliminating the limit of qualified consultants that can be on a roster at any time.

6.75.020 Objectives of the Consultant Roster Program

- A. To establish a pool of experts and technical support within the consultant community from which City departments can draw.
- B. To save departments time and money in the selection of and hiring process for consultants.
- C. To provide the opportunity for small business concerns to obtain experience as prime consultants on City projects.

6.75.030 Authority

The Consultant Roster Program is governed by the requirements of SMC Ch. 3.114, and these Rules. In the event of a conflict between applicable provisions of the Seattle Municipal Code and these Rules, the Seattle Municipal Code shall govern.

6.75.050 Definitions

In addition to the definitions included in Section 6.10.060 of these Rules, the following definitions shall apply to the implementation of the Consultant Roster Program.

- A. Category: "Category" means a specific type of consultant service that has been identified by a department or departments and that has been included as a type of consultant service in the selection process for the Consultant Roster Program.
- B. Roster: "Roster" means a list of qualified consultants selected for a particular category of services under the Consultant Roster Program.

C. **Small Business Concern:** "Small Business Concern" means one of the following:

1. A business that has been accepted by the Small Business Administration under the Small Business Act of the United States, 15 USC Section 632, and its implementing regulations, 13 CFR Part 121,
2. A business that has been certified as defined in any City program designed to encourage the utilization of small businesses.
3. A business that has certified to the City in its application for the Consultant Roster Program that it qualifies as a Small Business Concern under the guidelines of the Small Business Act of the United States, 15 USC Section 632, and its implementing regulations, 13 CFR Part 121.

6.75.060 Consumer Price Index Adjustments

SMC 3.114.150 and 3.114.160 establish procedures for consultant rosters to be used by departments. These sections include dollar amounts for the maximum contract value for a consultant roster contract, and the maximum dollar amount a consultant can receive from a department for a particular category of service prior to being deleted from that department's roster for the remainder of that calendar year.

Pursuant to the authority granted to the Director of Finance in SMC 3.114.140 and the requirements of SMC 3.114.160C, the dollar amounts for the consultant roster program are as follows:

- A. A participating department may contract with the consultants on the roster for projects estimated to cost no more than \$215,000 (except as may be adjusted in Section 6.75.060B)
- B. A participating department may amend a Roster Supplement for additional work related to the original scope of work up to a maximum of twenty five percent (25%) of the contract amount for that particular project or assignment. In no case shall the total amount for a specific project or assignment under the Consultant Roster Program, including all amendments, exceed \$268,750.
- C. Each participating department may only use a certified roster consultant annually up to a maximum amount of \$430,000 per roster category (except as may be adjusted in Section 6.75.060 (B)). Any consultant that reaches this limit within any calendar year shall not be selected from that consultant roster category for use by that participating department for the remainder of the calendar year. However, other participating departments which have not reached the maximum amount shall not be prevented from continuing to select that consultant for work. Each participating department is responsible for maintaining accurate records to ensure that this limit is not exceeded.

6.75.070 **Responsibilities**

- A. The Construction and Consultant Contracting Division of the Department of Finance shall be responsible for administration of the Consultant Roster Program, including administration of the evaluation process for new roster applicants.
- B. Departments that participate in the Consultant Roster Program shall:
1. Assist the Department of Finance in the consultant selection process.
 2. Comply with the following criteria in determining which consultant to select from a roster for a particular assignment or project:
 - a. Make efforts to rotate through all consultants on a roster for a particular category.
 - b. Select consultants based on their expertise and ability to complete the assigned project in a timely manner.
 3. Use the standard contract language for Roster Agreements.
 4. Keep complete and accurate records of the process used for its administration of the Consultant Roster Program, including accounting records of amounts obligated to consultants on each roster.
 5. Submit to the City Budget Office (CBO) on a monthly basis a report of the department's consultant activity. A copy of the report should also be sent to the Department of Finance (Construction and Consultant Contracting Division).

Note: The use of consultants selected through the Consultant Roster Program must be tracked and reported separately from consultants selected through other processes on the monthly report required by CBO.

6.75.080 **Selection of Roster Consultants by the Department of Finance**

In selecting consultants for a roster for a particular category, the Department of Finance, in conjunction with participating departments, shall evaluate and rate all consultants submitting an application for the Consultant Roster Program based on the published selection criteria. All consultants determined to be qualified shall be placed on the roster for that particular category.

Applications for the Consultant Roster Program may be submitted at any time by consultants. The Consultant Evaluation Committee for the Consultant Roster Program shall request subject matter experts in City departments to rate roster applications submitted. The Consultant Evaluation Committee shall, at least on a quarterly basis, review such ratings and make recommendations for selections to the roster to the Director of Finance.

Whenever fifteen (15) or more consultants qualify as "small business concerns" in a single roster category, the category shall consist only of those consultants who are eligible to be classified as a "small business concern." If fourteen (14) or fewer such consultants are qualified to be placed on a roster, consultants for that roster category shall be selected by the Department of Finance without regard to their eligibility under the small business criteria. In 2003, the Department of Finance will review the composition of each roster to determine whether there are a sufficient number of "small business concerns" and whether large businesses previously selected for a roster should be deleted from the roster.

6.75.090 Duration of Consultant Rosters

City-wide consultant rosters, as established under these Rules and SMC Ch. 3.114, shall continue in existence until such time as the Director of Finance determines it is in the best interests of the City to disestablish the roster. City departments may petition the Department of Finance for the establishment or disestablishment of a roster, or a roster category where the existing rosters or roster categories do not meet the needs of the department.

The Department of Finance shall establish the effective date of the rosters.

6.75.100 Deletion of Consultants from a Roster

A. Authority of the Department of Finance to delete consultants. After allowing the consultant an opportunity to be heard, if the Construction and Consultant Contracting Division (in conjunction with participating departments) finds any of the following circumstances applicable to a consultant, the consultant shall be deleted from City-wide consultant rosters used by all participating departments:

1. The consultant requests deletion from the roster(s).
2. The consultant is found to be in default in the performance of a City contract or is disqualified from City contracting, or the consultant has failed to file applicable business and occupation tax reports; or does not possess a valid City business license, or other state licenses or certifications necessary to practice the particular profession.
3. The consultant has made a material misrepresentation in its response to the Consultant Roster Program solicitation. A misrepresentation is material if the consultant would have been ineligible for placement on a roster if the facts were fully known.
4. For any other reason that the Department of Finance deems to be in the interests of the City to do so.

The Construction and Consultant Contracting Division of the Department of Finance shall notify all participating departments of the deletion of any consultant from any roster.

B. Authority of Participating Departments to delete consultants. After allowing the consultant an opportunity to be heard, a participating

department may delete a consultant from its department roster for a particular category if:

1. The consultant declines or fails to execute a Roster Agreement for a roster category when a participating department selects the consultant to perform a particular assignment or project.
2. The consultant discontinues business within the Puget Sound area of Western Washington.
3. The consultant changes its organization or operations so that its response to the Consultant Roster Program solicitation, although correct when made, is no longer descriptive of its current status, and the changes place the participating department at a disadvantage.

Example: A consultant may have been selected for a particular category based on individuals with specific expertise who were employed by the consultant at the time of selection. If those individuals leave the employment of the consultant and new staff with the particular area of expertise are not hired by the consultant, the department may delete the consultant from its department roster.

4. The consultant (and/or a firm with an affiliation in ownership with the consultant) receives contracts from a participating department through a roster category that exceed the dollar limitation established pursuant to SMC 3.114.160.

6.75.120 Procedures for Utilizing Consultants from a Roster

The procedures for departments to follow in order to select a consultant through the Consultant Roster Program are as follows:

- A. Review the current list of roster categories that have been established for use by departments by accessing the InWeb site for the Consultant Roster Program.
- B. Determine which category includes the type of services required. If a department is unable to find a category for the type of services desired, it should contact the Department of Finance (Construction and Consultant Contracting Division) for assistance.
- C. Review the statements of qualifications of consultants in the relevant category to determine which consultants, if any, have the required expertise for the work. This information is available on the InWeb for review by departments.
- D. If more than one firm has the expertise needed, or if information is needed to determine if firms have the required expertise, prepare a set of questions to interview each qualified consultant (may be by telephone) to narrow the field.
- E. Comply with the following criteria in determining which consultant to select for a particular assignment or project:

1. **Make efforts to rotate through all consultants on a roster for a particular category.**
 2. **Select consultants based on their expertise and ability to complete the assigned project in a timely manner.**
- F. Contact the selected firm and begin negotiations on the scope and cost for the desired work.**
- G. After satisfactory negotiation between the selected consultant and the participating department has been reached, the department shall prepare a Roster Agreement for execution by the Consultant and the department head. :**
- H. Submit the Roster Agreement to the consultant for execution.**
- I. After the consultant has signed the Roster Agreement, obtain the signature of the department head on these documents.**
- J. After execution of the Roster Agreement, submit a copy of the following documents to the Department of Finance (Construction and Consultant Contracting Division), using the "Consultant Contract and Amendment Transmittal Form" (Appendix F): signed Roster Agreement.**
- K. File the original Roster Agreement with the City Clerk using the approved "Consultant Contract and Amendment Transmittal Form" (Appendix F).**
- L. Send a copy of the signed Roster Agreement to the consultant. See Chapter 6.30 of these Rules for more information on filing requirements.**

Chapter 6.80
STANDARD WORDING FOR CONSULTANT CONTRACTS

6.80.005 **Explanation of Standard Wording**

- A. **General.** The Department of Finance issues two boilerplates (non-roster consultant agreements and Roster Agreements). These boilerplates contain standard contract provisions that may be used for consultant contracts. The wording is necessary in order to comply with various City ordinances and to protect the City's interests.
- B. **Changes in the wording.** Some sections may need to be modified by administering departments in order to meet the particular needs of a certain contract. Other sections may need to be added by the administering department for each contract. Any modifications or additions to any of the standard contract wording should be made only after approval by the City Attorney.

References in the standard wording to the "Consultant" should be changed, as necessary, by the administering department to match the designation of the other contracting party as such designations appear in the remainder of the contract (e.g., "contractor", "service provider", "firm", "designer", etc.).

- C. 1. The standard agreement includes sections for Term of Agreement, Scope of Work, Payment, Payment Procedures, and Addresses for Notices and Deliverables. These sections must be specifically written and filled in by the administering department for each contract. Departments should ensure that the Scope of Work language that is developed is detailed and specific, and provides enough description to ensure that the City is able to hold the consultant accountable for performing the work intended.
2. **Insurance.** The standard agreement contains provisions which may be used when it has been determined by the administering department, in consultation with Risk Management Administrator, that commercial general liability insurance, commercial automobile liability insurance, and/or professional liability insurance (errors and omissions insurance) is desirable for a particular contract. The Risk Management Administrator should be consulted regarding the minimum limits of coverages to be required. The contract wording may need to be modified by departments to reflect the appropriate type and amounts of insurance required for a particular contract.
- D. Approved provisions for standard consultant contracts is available at the InWeb website (<http://inweb/contracting/ruleshome.htm>) or upon request from the Construction and Consultant Contracting Division of the Department of Finance.

6.80.010 **General Contract Requirements**

Every contract, retainer, change order, amendment, and any other form of consultant agreement, regardless of cost, must:

- A. Be in writing.
- B. Be signed by at least one authorized representative of each contracting party.
- C. Include a specific and detailed description of the scope of work or services to be provided by the consultant and the products of any sort to be delivered to the City.
- D. Include the maximum amount of compensation and any other consideration to be provided to parties to the agreement.
- E. Describe the timing and method(s) of such payment and any retainage to be held.
- F. Include the date the agreement is effective and is to expire.
- G. Include all equal employment opportunity, women's and minority business enterprise, and affirmative action provisions required by law, ordinance, rule or regulation.
- H. Authorize the City to audit the consultant's books and records with respect to services to be provided, costs thereof, and compensation paid therefor.
- I. Include any appropriate or required funding or other provision.
- J. Contain legal relations and/or insurance sections as deemed necessary by the awarding department with advice from the City Attorney and/or the Risk Management Administrator regarding the amount of general liability and/or professional liability insurance necessary to protect the City's interests.
- K. Include the consultant's City of Seattle Business License number:
 1. All consultants whose business address is within the City of Seattle.
 2. All consultants whose business address is outside of the City of Seattle, when the amount of the contract exceeds \$5,000.

In addition, all subcontractors performing work within the City of Seattle must have a City business license. See SMC 5.44.040 for business license requirements.

6.6J.015 City Attorney Review of Contracts

Consultant contracts of \$37,000 or more are subject to review by the City Attorney of, among other aspects, form; the specificity of descriptions of work to be performed for and products or results to be delivered to the City; and liability, insurance, indemnification and bonding clauses.

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The City Attorney will review contracts for less than \$37,000 upon the request of a Department head.

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Chapter 6.90
WMBE, EEO, and OTHER REPORTING REQUIREMENTS

6.90.010 **Applicable WMBE Requirements**

- A. For consultant contracts executed on or after December 3, 1998, WMBE set-aside requirements do not apply. Departments shall use the standard contract boilerplate language regarding efforts to use Women and Minority Business Enterprises, unless the contract has federal funds and has DBE goal requirements. Departments shall contact the Department of Finance (Construction and Consultant Contracting Division) for information on the procedures for DBE goal establishment, pre-award evaluation, administering amendments and obtaining standard contract language for contracts including DBE requirements.
- B. **SMC Ch. 20.46A:** Consultant contracts for which proposals were due on or after May 1, 1994 and were executed prior to December 3, 1998, continue to be governed by the Department of Finance WMBE Rules, Chapter 120, implementing the City's WMBE ordinance, codified as SMC Ch. 20.46A. Departments are advised to contact the Department of Finance (Construction and Consultant Contracting Division) for questions regarding implementation of SMC Ch. 20.46A.

6.90.025 **Final Consultant Contract Payments Reporting Form Requirements**

Departments are required to attach the "Final Consultant Contract Payments Reporting Form" to each consultant agreement, including Roster Agreements. This form reports the amounts the consultant may have been required to pay to its sub-consultants during the term of the contract, and the net amount paid to the consultant (after deducting the amounts paid to sub-consultants). Consultants must complete the Form within 30 days after the consultant has received its final payment from the City, and submit the Form to the Construction and Consultant Contracting Division.

A sample of this form is located in Appendix D.

6.90.040 **Equal Benefits Compliance Declaration Form**

For all consultant contracts or Roster Supplements of \$37,000 or more, the administering department must ensure that the consultant has completed the Equal Benefits Compliance Declaration form, indicating that they are in compliance with SMC Ch. 20.45 and the Equal Benefits Program Rules.

A sample of this two page form is available in Appendix E.

Chapter 6.105
CONSULTANT CONTRACTING REQUIREMENTS MATRIX

Dollar Amount of Contract	Requirements
All Consultant Contracts	<ol style="list-style-type: none"> 1. Consult with the Risk Management Administrator to determine the appropriate types and amounts of insurance that should be required (See Section 6.20.010). 2. Include appropriate contract language in the Agreement (See Sections 6.80.005 and 6.80.010) and attach a blank Final Consultant Contract Payments Reporting Form to the contract (See Section 6.90.080 and Appendix D). 3. File original signature copy of contract and related documents with City Clerk upon execution using the Consultant Contract and Amendment Transmittal Form. (See Section 6.30.010). 4. File copy of contract with the Construction and Consultant Contracting Division in the Department of Finance upon execution using the Consultant Contract and Amendment Transmittal Form. (See Rule 6.30.020). 5. Have the consultant submit a Final Consultant Contract Payments Reporting Form (See Section 6.90.080) to the Construction and Consultant Contracting Division. 6. File Performance Review and Evaluation Report with the City Clerk and with the Construction and Consultant Contracting Division in the Department of Finance within 30 days after expiration date of contract (See Section 6.30.040).
\$1,000 to \$14,999.99	<ol style="list-style-type: none"> 1. If the contract is for the services of an architect, engineer, landscape architect or land surveyor, follow the advertising and selection requirements of Chapter 39.80 RCW as outlined in Section 6.70.040. 2. If the contract is for one of the following types of services, evidence of the consultant's insurance liability coverage (commercial general liability, automobile liability, etc.) as required by contract must be submitted to the department and to Risk Management Administrator: Architectural or Engineering, Environmental Related or Hazardous Materials services, Personal Growth Training services, or Training Manuals for High Risk services (e.g., Police and Fire) (See Section 6.20.020A for more detailed definitions of types of services which would require the submission of evidence of insurance coverage).

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CITY OF SEATTLE)

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I, Kenneth J. Nakatsu, Deputy Director of Finance, do hereby certify that this is a true and correct copy of the revised "General Rules for Consultant Contracting," which I adopted on March 25, 2002, as the same now appears on file and of public record in the Construction and Consultant Contracting Division of the Department of Finance.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of March 2002.


KENNETH J. NAKATSU, Deputy Director
Department Of Finance
The City Of Seattle

IT IS DUE TO THE QUALITY OF THE DOCUMENT.