

2.3 Personal Services Contract Policy

Policy Statement

Where a department wishes to engage the services of a person by contract, a personal services contract must be prepared in accordance with the policy requirements established herein to have legal force and effect.

Where a government agency wishes to engage the services of a person with annualized compensation of \$75,000 or above, documentation must be prepared in accordance with the policy requirements established herein to have legal force and effect.

Definitions

COMPENSATION

The annualized base salary and any other monetary payments, contributions or benefits required or potentially required to be made, paid or provided by the employer to or on behalf of the employee pursuant to a personal services contract.

DEPARTMENT

Department, office, and public service entities of the Government of Nova Scotia as defined in the *Public Service Act*.

DEPUTY HEAD

The deputy minister or designate of a department or the senior administrative officer of a government agency not reporting through a deputy minister.

GOVERNMENT AGENCY

A government business enterprise or government unit or any body or class of bodies as defined by Section 10 of the *Public Service Act*.

PERSONAL SERVICES CONTRACT

An agreement that establishes an employment relationship between an individual and a department, office or government agency, whether or not the terms are in writing, and includes any amendment of or extension to such an agreement.

Policy Objectives

- To establish a process by which departments and government agencies may obtain approval to enter into personal services contracts.
- To determine when it is appropriate to use a personal services contract and to ensure consistent use of contracts.
- To promote consistency of human resource practices.
- To clarify roles and responsibilities in the review and approval process for both departments and government agencies.
- To promote fiscal accountability by reviewing compensation ranges for consistency with government compensation.

Application

This policy applies to all departments and government agencies, in accordance with the *Public Service Act* and *Personal Services Contract Regulations*.

Exemptions

This policy does not apply to the following employment relationships as exempted by Clause 6 of the *Personal Services Contract Regulations*:

- a personal services contract which has received the approval of the Minister of Education in accordance with s. 64(3A) of the *Education Act*
- an employment relationship with an individual appointed to the Civil Service who is not part of a bargaining unit;
- employment relationships governed by a collective agreement
- a personal services contract under which the compensation payable to the individual is governed by a compensation framework approved by the Executive Council
- a personal services contract to employ an individual in a particular occupation if the terms of the contract do not deviate from the contract template approved by the Executive Council for employment in the particular occupation;
- an employment relationship with an individual employed by a department or office on a casual basis for less than 12 continuous months where the terms and conditions of employment do not exceed those available under the Labour Standards Code.

Policy Directives - Departments

Departments must ensure the following requirements are met when entering into, extending or amending a personal services contract.

USAGE

Personal services contracts may be considered for use in departments under the following circumstances:

- the nature of the work or employment circumstances prevent the creation of a civil service position
- the work is considered project work requiring unique skills, knowledge or qualifications
- the work is considered short term
- there must be a FTE and funding

Personal services contracts may be used for positions including Deputy Ministers, Chief Executive Officers, Executive Assistants to Members of the Executive Council and personnel in the Office of the Premier.

Treasury and Policy Board has approved a contract template (Appendix 2-C, Standard Employment Contract of Service) to be used when departments are engaging the services of a person by contract.

APPROVAL PROCESS

- Departments are required to consult with the Public Service Commission prior to commencing negotiations to enter into a personal services contract to employ an individual in a department.
- Personal services contracts containing annualized compensation of \$75,000 or less must be approved by the Deputy Head of the department in order for the contract to have force and effect.
 - The proposed contract along with documentation outlining the rationale for using a contract, the length of the contract and the proposed compensation are to be sent to the Deputy Head to obtain the required approval prior to concluding negotiations with the employee.
 - The Deputy Head is responsible for reviewing the submission to ensure consistency with this policy.
 - If approved, the personal services contract signed by the Deputy Head will be returned for signature by the employee.

- Personal services contracts containing annualized compensation of more than \$75,000 but less than \$120,000 must be approved by the Deputy Head of the department, the Public Service Commissioner and the Deputy Minister of Treasury and Policy Board in order for the contract to have force and effect.
 - The requesting department must submit the proposed contract along with documentation outlining the rationale for using a contract, the length of the contract and the proposed compensation to the Public Service Commission to obtain the required approvals prior to concluding negotiations with the individual.
 - If approved, the personal services contract signed by the Public Service Commissioner and the Deputy Minister of Treasury and Policy Board will be returned to the requesting department to obtain the signature of the Deputy Head and the employee.
- Personal services contracts containing annualized compensation of \$120,000 or more must be approved by Executive Council or Treasury and Policy Board in order for the contract to have force and effect.
 - The requesting department must submit the proposed contract and Memorandum to Executive Council outlining the rationale for using a contract, the length of the contract and the proposed compensation to Treasury and Policy Board to obtain the required approval prior to concluding negotiations with the individual.
 - Treasury and Policy Board staff will consult with the Public Service Commission on all aspects of personal services contract submissions proposing annualized compensation over \$120,000.
 - A minute letter will be issued communicating the decision of Executive Council/Treasury and Policy Board.
 - If approved, the personal services contract will be signed by the Public Service Commissioner and the Deputy Minister of Treasury and Policy Board and will be returned to the requesting department to obtain the signatures of the Deputy Head and the employee.
- A personal services contract containing annualized compensation under \$120,000 that does not follow the contract template (Appendix 2-C, Standard Employment Contract of Service) must be approved by the Deputy Head of the Department, the Public Service Commissioner and the Deputy Minister of Treasury and Policy Board in order for the contract to have force and effect.

- The requesting department must submit the proposed contract along with supporting documentation outlining the rationale for using a contract, the length of the contract and the proposed compensation, explaining why a deviation from the template is necessary, to the Public Service Commission to obtain the required approvals prior to concluding negotiations with the individual.
- If approved, the personal services contract will be signed by the Public Service Commissioner and the Deputy Minister of Treasury and Policy Board and will be returned to the requesting department to obtain the signatures of the Deputy Head and the employee.
- The requesting department must file a fully signed copy of all personal services contracts with the Public Service Commission.

Policy Directives - Government Agencies

APPROVAL PROCESS

- A personal services contract to employ an individual in a government agency containing annualized compensation of \$75,000 or more, must be approved in accordance with this policy in order for the contract to have force and effect.
- A government agency shall not commence recruitment of an individual to enter into a personal services contract with annualized compensation of more than \$75,000 but less than \$120,000 until the proposed terms of the personal services contract, including compensation, have been approved by Public Service Commissioner and the Deputy Minister of Treasury and Policy Board.
 - The requesting government agency must submit documentation outlining the rationale for the proposed terms of the personal services contract, including compensation, to the Public Service Commission to obtain the required approvals prior to concluding negotiations with the individual.
 - If granted, approval of the Public Service Commissioner and the Deputy Minister Treasury and Policy Board will be issued in writing.
- A government agency shall not commence recruitment of an individual to enter into a personal services contract with annualized compensation of \$120,000 or more until the proposed terms of the personal services contract, including compensation, have been approved by the Executive Council or Treasury and Policy Board.

- The requesting agency must submit a Memorandum to Executive Council outlining the rationale for the proposed terms of the personal services contract, including compensation to Treasury and Policy Board to obtain the required approval.
- A minute letter will be issued communicating the decision of Executive Council/Treasury and Policy Board.
- A personal services contract may be entered into on the same terms that were approved by the Public Service Commissioner/Deputy Minister Treasury and Policy Board or Executive Council/ Treasury and Policy Board without further approval.
- Before a government agency agrees to a term in a personal services contract which deviates from the terms approved by the Public Service Commissioner/Deputy Minister Treasury Policy Board or Executive Council/Treasury and Policy Board, the government agency must re-submit documentation to obtain approval of the terms of the contract by the appropriate authority prior to concluding negotiations with the individual.
- If granted, approval will be issued in writing by the appropriate authority.
- The final terms of a personal services contract between an individual and a government agency shall be in writing and filed with the Public Service Commission and Treasury and Policy Board.

Routine Access

The terms contained in personal services contracts other than personal information shall be released under the Routine Access Policy of a department, or government agency.

Accountability

EXECUTIVE COUNCIL/TREASURY AND POLICY BOARD

The Executive Council / Treasury and Policy Board has responsibility for approval of personal services contracts entered into by departments and government agencies with annualized compensation in excess of \$120,000.

DEPUTY MINISTER, TREASURY AND POLICY BOARD

The Deputy Minister Treasury and Policy Board is responsible for:

- administration of the approval process for personal services contracts in accordance with this policy
- approving the use of personal services contracts as required by this policy.

PUBLIC SERVICE COMMISSION

The Public Service Commission is responsible to act in an advisory capacity to departments, government agencies and Treasury and Policy Board on issues relating to personal services contracts.

PUBLIC SERVICE COMMISSIONER

The Public Service Commissioner is responsible for:

- monitoring personal services contracts for appropriate usage and consistency with government compensation
- approving the use of personal services contracts as required by this policy.

DEPUTY HEADS

Deputy Heads are responsible for ensuring compliance with the requirements established by this policy for use of personal service contracts.

Monitoring

- Treasury and Policy Board with the support of the Public Service Commission and applicable line departments, shall coordinate periodic reviews to ensure compliance with this policy by departments and government agencies.
- Departments and government agencies shall provide all documentation deemed necessary to conduct any reviews of this policy.

References

Public Service Act
Personal Services Contract Regulations
Government of Nova Scotia Fair Hiring Policy

Enquiries

Strategic Support Services, Public Service Commission (902) 424-7660
Executive Council Operations, Treasury and Policy Board (902) 424-6611

Approval date: September 13, 2005
Approved by: Executive Council

Manual release date: January 9, 2003
Most recent review:

Appendices

Appendix 2-C Standard Employment Contract of Service Template

Appendix 2-C

Standard Employment Contract of Service

THIS AGREEMENT, made _____, 20__.

BETWEEN

HER MAJESTY THE QUEEN in right of
the Province of Nova Scotia, as represented by
(Name), Deputy Minister, (Department)
(hereinafter called the “Employer”)

AND

(Name)
(hereinafter called the “Employee”)

IN CONSIDERATION of the mutual promises herein contained, the Parties covenant and agree as follows:

I. The Employee agrees:

- a) to provide services as _____ in the _____
under the direction of the _____;
- b) to work at least the minimum number of hours per week required of full-time civil servants;
- c) to treat as confidential and to keep private and not to make public or to divulge, except in the course of performing duties or providing services under this Agreement, during or after the term of this Agreement, any information or materials of a confidential character relating to the affairs of the Province of Nova Scotia to which the Employee becomes privy acting under this Agreement, unless consent in writing of the Employer is first obtained; and
- d) to be bound by the principles and purposes of both the Code of Conduct for

Civil Servants established in the Management Manual 500 and the Members and Public Employees Disclosure Act, S.N.S., 1991, Chapter 4.

2. The Employer agrees:
 - a) to pay a salary to the Employee of \$ _____ per year, before any deductions required by law or this Agreement;
 - b) to grant the Employee vacation days earned at a rate of 1.25 days for each month of employment, to be taken in the year they are earned;
 - c) to reimburse the Employee for all expenses incurred that would be reimbursed if incurred by a civil servant;
 - d) to grant the Employee the same holiday benefits given to civil servants;
 - e) to allow the Employee:
 - i) to enroll in the Province of Nova Scotia Group Life Insurance Policy;
 - ii) to receive insured health benefits under the Province of Nova Scotia Consolidated Health Plan;
 - f) to grant the Employee sick leave benefits at the rate of 1.5 days per month for each month of service to a maximum of 18 days per year; and
 - g) to indemnify the Employee and to extend to the Employee the same protection against liability from suits or claims brought against the Employee in respect of work performed on behalf of the Province as the Employer would provide to a civil servant.
3. The Employee is not entitled to enroll in the Province of Nova Scotia Public Service Long Term Disability Plan and is not, by this Agreement or otherwise, a civil servant.
4. The term of this Agreement is ____ months, from _____, 20__ to _____, 20__, unless terminated earlier under this Agreement or extended by mutual agreement in writing.
5. a) Despite any other provision herein, this Agreement may be terminated without notice or compensation in lieu of notice, for just cause, which the parties agree includes failure by the employee to carry out the terms of the Agreement. In the event of such termination, and subject to subsection (b), the Employee must be paid the sum or sums that have accrued under Section 2(a) up to the date of termination, and such sum or sums must be received by the Employee in full satisfaction and discharge of all claims and

- demands unnecessary against the Employer in respect of this Agreement.
- b) Despite subsection (a), this Agreement may be terminated at any time, for any reason, by either of the Parties giving to the other Party thirty (30) days' written notice to that effect, and upon such termination the Employee must be paid the sum or sums that have accrued under Section 2(a) up to the date of termination, and such sum or sums must be received by the Employee in full satisfaction and discharge of all claims and demands against the Employer in respect of this Agreement.
6. The Parties agree that any recourse or remedy arising with this Agreement arises from contract, and that neither Party has a claim or remedy, in damages or otherwise, in tort arising from performance or non-performance of this Agreement.
 7. All materials and information produced from the performance of this Agreement and all rights therein belong to the Employer.
 8. The Employer reserves the right to publish or release, in whole or in part, to publish an amended version or not to publish or release at all, or to use or not to use as the Employer considers fit, any research, reports, material, audio-visual materials, or information produced by the Employee in the performance of this Agreement.
 9. This Agreement is not assignable.
 10. Any discretionary authority or right under this Agreement is not subject to the expectations, reasonable or otherwise, of the Parties to the contract, and any action taken under a discretionary provision is deemed to be an exercise in good faith.
 11. No term or provision of this Agreement is deemed waived and no breach excused, unless the waiver or consent to the breach is in writing, signed by the Party making the waiver or giving the consent. Any waiver of a term or provision or consent to a breach, whether express or implied, does not constitute a waiver of a different term or provision or consent to a different or subsequent breach or continuation of the same breach unless expressly stated.
 12. If any term or provision of this Agreement is found to be unenforceable or illegal, the rest of the Agreement remains in full force and effect except that the offending term or provision is deemed to be removed from the Agreement.
 13. Any notice required to be given under this Agreement is be valid if given in writing by pre-paid registered letter addressed as follows:
to the Employer:

Commissioner, Public Service Commission
One Government Place, 4th Floor
1700 Granville Street
PO Box 943
Halifax, NS B3J 2V9

and to the Employee:

Employee's Name
Employee's Address

or to another address as is communicated in writing to the Parties, and is deemed to have been given two business days after the day such letter is posted. Nothing in this Agreement precludes the delivery of notices pursuant by means other than mailing.

14. Time is of the essence in this Agreement.
15. The Parties acknowledge that this Agreement is of no force and effect unless approved as required by the *Public Service Act* and regulations.
16. The Employee hereby certifies that he/she has reviewed and fully understands the terms of this Agreement, and agrees that this Agreement constitutes the whole agreement replaces any previous agreements between the Parties, that no representation or statement not expressly contained survives this Agreement or is binding upon either Party, and that this Agreement can only be modified by written instrument.
17. This Agreement shall be construed in accordance with the laws of the Province of Nova Scotia.

IN WITNESS WHEREOF the Parties have executed this Agreement on the day and year first above written:

SIGNED, SEALED)

AND DELIVERED)

in the presence of :)

)

_____)

Witness)

Employee

)

) **HER MAJESTY THE QUEEN** in

) Right of the Province of Nova Scotia

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_____)Per. _____

Witness)

Deputy Minister, Treasury and Policy Board

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Witness)

Commissioner, Public Service Commission

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Witness)

Deputy Minister, Originating Department

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