



Guide for contracting fire protection services

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Purpose

The purpose of this document is to provide fire chiefs with applicable information to consider while negotiating a contract for services that a fire district or city/town fire department may provide to a non-tax paying entity for a fee or an exchange of services. The Washington Fire Chiefs has done its best to include feedback received from members and stakeholders in developing this guideline. In meeting the needs and interests of member chiefs and agencies it is recognized that not all fire chiefs agree with all of what is offered or suggested in this guideline however, the information is offered as a way to develop and assist a fire chief in options as they negotiate fair and equitable compensation for the services they will provide. It is important to reinforce that anything in this guideline is non-binding on a local fire chief that is negotiating with an entity for fire, EMS or other services. The variance of fire services, levy rates, assessed values, cost of living and other factors make it impossible to have one rule that applies statewide. Therefore, options are provided as an example and to create curbs around the subject for fire chiefs to consider as part of their negotiations process.

The Law

The applicable contract provision for fire districts is as follows:

RCW 52.30.020

Property of public agency included within district — Contracts for services.

Wherever a fire protection district has been organized which includes within its area or is adjacent to, buildings and equipment, except those leased to a nontax-exempt person or organization, owned by the legislative or administrative authority of a state agency or institution or a municipal corporation, the agency or institution or municipal corporation involved shall contract with such district for fire protection services necessary for the protection and safety of personnel and property pursuant to the provisions of chapter 39.34 RCW: PROVIDED, That nothing in this section shall be construed to require that any state agency, institution, or municipal corporation contract for services which are performed by the staff and equipment of such state agency, institution, or municipal corporation: PROVIDED FURTHER, That nothing in this section shall apply to state agencies or institutions or municipal corporations which are receiving fire protection services by contract from another municipality, city, town, or other entities: AND PROVIDED FURTHER, That school districts shall receive fire protection services from the fire protection districts in which they are located without the necessity of executing a

contract for such fire protection services: PROVIDED FURTHER, That prior to September 1, 1974, the superintendent of public instruction, the chief of the Washington state patrol through the director of fire protection, the director of financial management, and the executive director of the Washington fire commissioners association, or their designees, shall develop criteria to be used by the chief of the Washington state patrol through the director of fire protection in establishing uniform rates governing payments to fire districts by school districts for fire protection services. On or before September 1, 1974, the chief of the Washington state patrol through the director of fire protection shall establish such rates to be payable by school districts on or before January 1st of each year commencing January 1, 1975, payable July 1, 1975: AND PROVIDED FURTHER, That beginning with the 1975-77 biennium and in each biennium thereafter the superintendent of public instruction shall present in the budget submittal to the governor an amount sufficient to reimburse affected school districts for the monies necessary to pay the costs of the uniform rates established by the chief of the Washington state patrol through the director of fire protection.

The applicable contract provision for cities is as follows:

RCW 35.21.775

Provision of fire protection services to state-owned facilities.

Subject to the provisions of RCW [35.21.779](#), whenever a city or town has located within its territorial limits facilities, except those leased to a nontax-exempt person or organization, owned by the state or an agency or institution of the state, the state or agency or institution owning such facilities and the city or town may contract for an equitable share of fire protection services for the protection and safety of personnel and property, pursuant to chapter [39.34](#) RCW, as now or hereafter amended. Nothing in this section shall be construed to require the state, or any state agency or institution, to contract for services which are performed by the staff and equipment of such an entity or by a fire protection district pursuant to RCW [52.30.020](#).

AND

RCW 35.21.779

Fire protection services for state-owned facilities—Contracts with the department of community, trade, and economic development—Consolidation of negotiations with multiple state agencies—Arbitration.

(1) In cities or towns where the estimated value of state-owned facilities constitutes ten percent or more of the total assessed valuation, the state agency or institution owning the facilities shall contract with the city or town to pay an equitable share for fire protection services. The contract shall be negotiated as provided in subsections (2) through (6) of this section and shall provide for payment by the agency or institution to the city or town.

(2) A city or town seeking to enter into fire protection contract negotiations shall provide written notification to the department of commerce and the state agencies or institutions that own property within the jurisdiction, of its intent to contract for fire protection services. Where there are multiple state agencies located within a single jurisdiction, a city may choose to notify only the department of commerce, which in turn shall notify the agencies or institution that own property within the jurisdiction of the city's intent to contract for fire protection services. Any such notification shall be based on the valuation procedures, based on commonly accepted standards, adopted by the department of commerce in consultation with the department of enterprise services and the association of Washington cities.

(3) The department of commerce shall review any such notification to ensure that the valuation procedures and results are accurate. The department will notify each affected city or town and state agency or institution of the results of their review within thirty days of receipt of notification.

(4) The parties negotiating fire protection contracts under this section shall conduct those negotiations in good faith. Whenever there are multiple state agencies located within a single jurisdiction, every effort shall be made by the state to consolidate negotiations on behalf of all affected agencies.

(5) In the event of a notification by one of the parties that an agreement cannot be reached on the terms and conditions of a fire protection contract, the director of the department of commerce shall mediate a resolution of the disagreement. In the event of a continued impasse, the director of the department of commerce shall recommend a resolution.

(6) If the parties reject the recommendation of the director and an impasse continues, the director shall direct the parties to arbitration. The parties shall agree on a neutral arbitrator, and the fees and expenses of the arbitrator shall be shared equally between the parties. The arbitration shall be a final offer, total arbitration, with the arbitrator empowered only to pick the final offer of one of the parties or the recommended resolution by the director of the department of commerce. The decision of the arbitrator shall be final, binding, and non-appealable on the parties.

(7) The provisions of this section shall not apply if a city or town and a state agency or institution have contracted pursuant to RCW [35.21.775](#).

(8) The provisions of this section do not apply to cities and towns not meeting the conditions in subsection (1) of this section. Cities and towns not meeting the conditions of subsection (1) of this section may enter into contracts pursuant to RCW [35.21.775](#).

It is noteworthy that the contract provisions cited for cities and towns are specific to state-owned facilities, whereas the provision for contracts for fire districts is for state agency owned facilities and municipal corporations unless they are nontax-exempt like churches. One difference between the two is the provision “shall contract” for fire districts and “may contract” for cities and towns. The definition of

fire protection services is not provided specifically for this statute so it takes on the common definition found in a dictionary.

Experience with contracts

The contract provisions vary greatly from jurisdiction to jurisdiction. In some jurisdictions, these provisions were negotiated annually and in others, existing contracts were typically just renewed year after year. It is assumed that at some point in history these existing contracts were initially negotiated. About ten years ago, the fire service began to receive challenges to their existing contracts, including reduced rates and, in some cases, unilateral cancellations. For fire districts, the one group that seems to have taken the lead in these disputes has been the public housing authorities. These authorities are principally tax funded and rely heavily on government grants. The argument from the authorities has been that they have limited funds, that their work is critical and therefore should receive free fire and EMS services. Recently, one state agency decided to restructure their contracts for fire protection services to establish a uniform rate per square foot of facilities they own. That change resulted in some fire agencies receiving increases and some receiving decreases compared to previous contract amounts. Each fire agency has unique funding mechanisms and amounts they levy to provide services within their response area. There are variances in how the statute allows for payment of fire protection for non-tax facilities. One example would be public schools where payment is based on the number of students within the school.

Understanding spirit and intent of the law

Through past disputes, mediation, case law and experience we have come to understand that the legislature recognized that fire protection could not be reasonably withheld from non-tax paying entities. It further recognized that fire agencies were prohibited from gifting of public services. It is also understood that the voting public would likely not support the notion that their taxes for fire protection services would completely subsidize public services for non-tax paying entities. In fact in most cases, some of these facilities such as those owned by public housing authorities, are frequent users of fire protection and EMS services. While the statute does not call out a specific amount the state agency or non-tax paying entity should pay for fire protection, it is implied that the amount would land somewhere less than what the citizens in that jurisdiction pay for those services and more than zero. The current definition of fire protection seems to exclude EMS services, which is typically 70% or more of response activity a typical fire agency provides. This reflects the age of the current statute and the evolution of services provided. Fire agencies have resisted the no response option based on law, politics and local expectations.

Practical application

While a uniform amount statewide has been proposed by one state agency, it is not reflective of the history and intent of this provision. A universal methodology for determining contract negotiations that is applied reasonably seems to meet the spirit and intent of statute and the needs of all concerned. It may be viewed as unreasonable to require every qualifying agency who desires services negotiate with every fire department annually even though the statute allows for that. Where contracts are involved we support a fair, reasonable and efficient means to curtail extended negotiations where that is possible. Any solution must reflect the different amounts each fire district levies for the level of service

they provide. A fair and equitable universal methodology would need to determine the levy rates or equivalent levy rates for fire protection and assessed value or equivalent of the facilities for contract fire protection. It is noteworthy that county auditors who are charged with assessing the value of all buildings sought for and received an exemption for non-tax paying structures. Many had implemented that practice prior to the change in statute, so information for these facilities is not available through that agency.

One possible methodology to comply with the spirit and intent of the law in a fair and equitable way would include a percentage of what local citizens pay for fire protection within their communities. Below is an illustration of how that might occur with some options based on outliers or anomalies.

To determine a fire district levy rate it would require direct contact with the fire district or the county assessor's office. Usually, the county assessor's produce a document called Statement of Assessments, which include all levy rates within the county including fire districts, an example of this can be found on page six of this document: <http://www.kitsapgov.com/assr/levy/Book2015.pdf> These levy rates include, fire, EMS, bonds, M&O, and excess. They exclude benefit service charges because they are not taxes but rather fees for services, even though many assessors have included the amount charged for the BSC on the tax statement mailed to each taxpayer.

Determining an equivalent levy rate for a city or town cannot be done through the assessor's office alone. Since cities and towns generate revenue from property tax levies and other sources that go into the general fund and then to individual departments, another method must be used. One possibility would be to determine the annual city or town fire department operating budget. This information can be determined directly from the city or town finance or the fire department. Once that amount has been determined then the assessed value must be obtained either through the fire department, county assessor or the state at (See table 30):
http://dor.wa.gov/Content/AboutUs/StatisticsAndReports/2011/Property_Tax_Statistics_2011/default.aspx

By way of hypothetical example, suppose the city fire department served an assessed value of \$7 billion and has an annual operating budget of \$21 million. By dividing the assessed value by 1000 and then dividing the annual budget by that quotient you produce a levy equivalent. In this example, the result is a levy equivalent of \$3.00 per thousand of assessed value. Assume this total levy rate includes a \$.50 EMS levy, which means the equivalent fire protection levy rate would be \$2.50 per \$1000 of assessed value. This rate excludes revenue for the fire department located in an account other than the operating budget, such as capital accounts for future large purchases.

The last part of the formula is determining the estimated assessed value of a structure. Since this value is no longer available through the county assessor's office, another method must be developed. This could be done many different ways. Perhaps a percentage of replacement value or through square foot valuation data. The latter method is used as a guide for determining initial fire loss value of structures by some fire departments. Building code regulatory agencies such as the Washington Building Officials and the International Code Council require cost per square foot estimates for new construction permit issuance, these could serve as a source where the actual value would be a percentage of construction value. An example of one such database can be found at: <http://www.iccsafe.org/wp-content/uploads/BVD-0815.pdf>

One additional method could involve estimating what the total square feet of businesses served within a fire response area and using the annual operating budget to determine the cost per square foot of fire protection. Then taking the square footage of a non-tax paying building and multiplying that by the cost per square foot would estimate a 100% value for fire protection.

Using some variation of the process described above would create a universal methodology that recognizes that fire agencies have different costs based on their location and the level of service they provide. It should also be recognized that even a universal methodology will require some flexibility to account for anomalies. These could be addressed through direct negotiations with the agencies involved.

Possible legislation

Caution is always advised when considering a change in legislation, especially when it relates to state-owned facilities since any increase is a direct demand on the state's general fund. This caution is amplified when the state is under a funding crisis such as what exists now in our state with the McCleary decision. As always, the best decisions are made from the inside out where we focus on mutual interests. If in the end, the percentage of contract compensation is too little, then we can cooperatively push for an increase in that particular state agencies budget without risk of losing what we have gained to date.

The difference in the two statutes for city fire departments and fire districts could be improved by changing the "may" to "shall" for cities and towns. Additionally, a definition for fire protection could be added that includes all services provided, such as EMS. Lastly consideration for mediation when the parties can't agree in a reasonable time should be considered for all fire protection contracts covered in RCW 52.30.020 and 35.21.775 to avoid formal legal action that doesn't meet anyone's best interest. One reasonable model for mediation found in statute is cited above as RCW.35.21.779.