

Chapter 6 - Business and Fiscal Affairs

AP 6370 Contracts – Personal Services

References:

Government Code Sections 4526, 4529.5, and 53060; Education Code Section 88003.1

The College may enter into personal services contracts to achieve cost savings when each of the following conditions is met:

- it can be clearly demonstrated that the proposed contract will result in actual overall cost savings to the College;
- the contractor's wages are at the industry's level and do not undercut College pay rates;
- the contract does not cause the displacement of College employees;
- the savings are large enough to ensure that employees will not be eliminated by private sector and College cost fluctuations that could normally be expected during the contracting period;
- the amount of savings clearly justifies the size and duration of the contracting agreement;
- the contract includes specific provisions pertaining to the qualifications of the staff that will perform the work under the contract, as well as assurance that the contractor's hiring practices meet applicable nondiscrimination standards;
- the potential for future economic risk to the College from potential contractor rate increases is minimal;
- the contract is with a firm; and
- the potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by the College.

Personal service contracts are also permissible when any one of the following conditions is met:

- the contract is for new functions mandated or authorized by the Legislature to be performed by independent contractors;
- the services are not available within the College or cannot be satisfactorily performed by College employees;
- the services are incidental to a purchase or lease contract;

- the policy, administrative, or legal goals and purposes of the College cannot be accomplished through the regular or ordinary hiring process;
- the work meets the criteria for emergency appointment;
- equipment, materials, facilities, or support services could not feasibly be provided by the College; or
- the services are of an urgent, temporary, or occasional nature.

Professional Services

Contracts for the services of persons who qualify as professional experts may be let without competitive bidding. Professional experts are persons specially qualified to provide services and advise in financial, economic, accounting, engineering, legal or administrative matters. They must be specially trained, experienced and competent to perform the services required. Compensation for special services and advice from professional experts may be paid from available funds in the amounts deemed proper for the services rendered.

The selection of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms shall be done through a request for proposal process on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required, with assurance of maximum participation of small business firms and prohibiting practices that might result in unlawful activity. An employee is prohibited from participating in the selection process if he/she has a relationship with a person or business entity seeking such a contract.

Independent Contractors

To be an independent contractor, substantial conformance with the following conditions must exist:

- the contractor controls the way in which work is performed;
- the contractor sets his or her own hours;
- the contractor is not restricted from taking jobs from other businesses at the same time that they are doing work for the College;
- no College employees have duties similar to the independent contractor;
- the College does not provide assistants to the contractor;
- the duration of employment is for a specific job, not for a specified period of time;
- the College does not furnish tools, training, or equipment to the contractor. Contractors should be able to perform their services without the College's facilities (e.g., equipment, office furniture, machinery);
- the contractor's investment in his or her trade must be real, essential, and adequate;

- the contractor has employer identification numbers with the Internal Revenue Service and the California Employment Development Department for reporting employer payroll taxes and employee wages;
- the individual is not presently employed by the College to do the same type of work;
- contractors are hired to provide a result and usually have the right to hire others to do the actual work;
- contractors are hired for the final result, and therefore should not be asked for progress or interim reports; and
- contractors are generally responsible for their incidental expenses, including travel expenses.

Contractors should be able to make a profit or a loss. Five circumstances show that a profit or loss is possible:

- if the contractor hires and pays assistants;
- if the contractor has his own office, equipment, materials, or facilities;
- if the contractor has continuing and reoccurring liabilities;
- if the contractor has agreed to perform specific jobs for prices agreed upon in advance; and
- if the contractor's services affect his own business reputation

Contractors can't be fired so long as they produce a result that meets the contract specifications.

Contractors are responsible for the satisfactory completion of a job or they may be legally obligated to compensate the hiring firm for failure to complete.

Consultants

Consulting services contracts refer to all services that:

- are of an advisory nature;
- provide a recommended course of action or personal expertise;
- have an end product which is basically a transmittal of information either written or verbal; and
- are obtained by awarding a procurement-type contract, a grant, or any other payment of funds for services of the above type.

The product may include anything from answers to specific questions to design of a system or plan, and includes workshops, seminars, retreats, and conferences for which paid expertise is retained by contract.

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