

## **AP 6370 CONTRACTS- PERSONAL SERVICES**

### **References:**

Education Code Section 88003.1;  
Government Code Section 53060;  
Labor Code Section 3353;  
Public Contract Code Section 10335.5  
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Public Contract Code Section 10335.5

### **Conditions**

The District may enter into personal services contracts to achieve cost savings when all of the following conditions are met:

- The District clearly demonstrates that the proposed contract will result in actual overall cost savings to the District, provided that;
- In comparing costs, there shall be included the District's additional cost of providing the same serve as proposed by a contractor. These additional costs shall include the salary and benefits of additional staff who would be needed and the cost of additional space, equipment, and material needed to perform the function.
- In comparing costs, there shall not be included the District's indirect overhead costs unless these costs can be attributed solely to the function in question and would not exist if that function was not performed by the District. The term "indirect overhead costs" shall mean the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.
- In comparing costs, there shall be included in the cost of a contractor providing a service any continuing District cost that would be directly associated with the contracted function. These continuing District costs shall include, but not limited to, those for inspection, supervision, or monitoring.
- The contractor's wages are at the industry's level and do not undercut District pay rates.

- The contract does not cause the displacement of District employees. The term “displacement” includes layoffs, demotion, involuntary transfer into a new classification, involuntary transfer to a new location requiring a change of residence, and time base reductions. The term “displacement” does not include changes in shifts or days off, nor does it include reassignment to other positions within the same classification and general location or employment with the contractor, so long as wages and benefits are comparable to those paid by the District.
- The savings shall be large enough to ensure that employees will not be eliminated by private sector and District 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 is awarded through a publicized, competitive bidding process.
- 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 District from potential contractor rate increases is minimal.
- The contract is with a firm. A “firm” means a corporation, limited liability company, partnership, nonprofit organization, or sole proprietorship.
- The potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by the District.

Notwithstanding any other provision, personal service contracting shall be permissible when any of the following conditions can be met:

- The contract is for new District functions and the State Legislature has specifically mandated or authorized the performance of the work by independent contractors.
- The services contracted are not available within the District, cannot be performed satisfactorily by District employees, or are of such highly specialized or technical in nature that the necessary expert or knowledge, experience, and ability are not available through the District.
- The services are incidental to a contract for the purchase or lease of real or personal property. Contracts under this criterion, known as “service agreements,” shall include, but not limited to, agreements to service or maintain office equipment or computers that are leased or rented.
- The policy, administrative, or legal goals and purposes of the District cannot be accomplished through the utilization of persons selected pursuant to the regular or ordinary hiring process. Contracts are permissible under this criterion to protect against a conflict of interest or to ensure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not limited to, obtaining expert witnesses in litigation.
- The nature of the work is such that the criteria for emergency appointments apply. The term “emergency appointment” means an appointment made for a period not to exceed 60 working days either during an actual emergency to prevent the stoppage of public business or because of the limited duration of the work. The method of selection and the qualification standards for an emergency employee shall be determined by the District. The frequency of appointment, length of employment, and the circumstances appropriate for the appointment of firms or individuals under emergency appointments shall be restricted so as to prevent the use of emergency appointments to circumvent the regular or ordinary hiring process.
- The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the District in the location where the services are to be performed.

- The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under the District's regular or ordinary hiring process would frustrate their very purpose.

### **Professional Experts**

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 special services and advise in financial, economic, accounting, engineering, legal or administrative matters if such persons are 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.

### **Independent Contractors**

"Independent contractor" means any person who renders service for a specified recompense for a specified result, under the control of his/her principal as to the result of his/her own work only and not as to the means by which such result is accomplished.

To be an independent contractor, substantial conformance with the following conditions shall 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 District.
- No District employees have duties similar to the independent contractor.
- The District does not provide assistants to the contractor.
- The duration of employment is for a specific job, not for a specified period of time.

- The District does not furnish tools, training, or equipment to the contractor. The contractor should be able to perform his/her services without the District's facilities (e.g., equipment, office furniture, machinery).
- The contractor's investment in his/her trade shall be real, essential, and adequate.
- The contractor has a Taxpayer Identification Number (also known as an Employer Identification Number) 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 District to do the same type of work.
- The contractor is hired to provide a result and usually have the right to hire others to do the actual work.
- The contractor is hired for the final result, and therefore should not be asked for progress or interim reports.
- The contractor is generally responsible for his/her incidental expenses.
- The contractor should be able to make a profit or a loss.

The following circumstances show that a profit or loss is possible:

- If the contractor hires and pays assistants.
- If the contractor has his/her 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.
- If the contractor's services affect his/her own business reputation.
- The contractor cannot be terminated so long as he/she produces a result that meets the contract specifications.
- The contractor is responsible for the satisfactory completion of a job or he/she may be legally obligated to compensate the District for failure to complete.

### **Consultants**

Consulting services contracts mean services that do all of the following:

- Are of an advisory nature.
- Provide a recommended course of action or personal expertise.
- Have an end product that is basically a transmittal of information either written or verbal and that is related to the governmental functions of the District.
- Are obtained by awarding a 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.

Also see BP/AP 6340 titled Bids and Contracts as well as AP 6380 titled Vendors