



AP 6370

CONTRACTS - PROFESSIONAL SERVICES

References:

Education Code Section 88003.1;
Government Code Section 53060;
Labor Code Sections 2775 et seq. and 3353;
Public Contract Code Section 10335.5

The District may enter into professional services contracts to achieve cost savings when one or more of the following conditions is met:

- It can be clearly demonstrated that the proposed contract will result in actual overall cost savings to the District;
- 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 savings are 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; and
- The potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by the District.

Professional service contracts are also permissible when any one of the following conditions are 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 District or cannot be satisfactorily performed by district employees;
- The services are incidental to a purchase or lease contract;



- The policy, administrative, or legal goals and purposes of the District 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 District; or
- The services are of an urgent, temporary, or occasional nature.

Professional Experts – Contracts for the services of persons who qualify as professional experts may be entered into without competitive bidding. Professional experts are persons specially qualified to provide services and advice 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.

Independent Contractors – To be an independent contractor, substantial conformance with all the following conditions must exist:

- The contractor controls the way in which work is performed.
- The contractors set their 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. Contractors should be able to perform their services without the District's facilities (e.g., equipment, office furniture, machinery).
- The contractors' investment in their 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 District 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.



- Contractors are responsible for their incidental expenses unless negotiated in the contract.

Contractors are responsible for the satisfactory completion of a job or they may be legally obligated to compensate the District 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 professional 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 may include workshops, seminars, retreats, and conferences for which paid expertise is retained by contract.

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