AP 6370  Independent Contractor Services

References:
   Government Code Section 53060, Education Code Section 88003.1

An individual must meet specific criteria, as determined by District to be appropriate to meet various state and federal guidelines, to be qualified as an independent contractor. District employees, including adjunct, adult hourly and college assistants, cannot be contracted as an independent contractor.

The following procedures presume that the Initiator:

(1) has sufficient budget dollars available for such procurement of services.
(2) has Departmental/Administrator approval, as applicable, to procure the services being requested.
(3) has verified that the individual has the appropriate permits and/or licenses as required by all applicable regulatory agencies to perform the services outlined in the independent contractor agreement.
(4) has verified that the individual has the appropriate experience and/or qualifications required by the independent contractor agreement.
(5) has provided a detailed (Exhibit A) – see example below, defining the scope of work and summarizing the qualifications of the independent contractor.

All staff and faculty recommending procurement of independent contractor services must complete the following steps and forms before an individual may become an approved independent contractor and be eligible for payment for services rendered.

The term “independent contractor” commonly is used for IRS purposes. The services of an independent contractor generally are of a limited or temporary nature.

IRS Criteria to Establish Status

- “Worksheet to Determine Independent Contractor vs. Employee” form (sample follows):
  - Answer questions 1-5. If ANY response is “Yes”, this individual’s status should be “employee”. Contact the Human Resources Department. If ALL responses are “No”, continue with Part 2.
  - Answer questions 6-12. Answering “Yes” to the majority of these questions should represent substantial compliance with the following conditions:
    - To be an independent contractor, substantial conformance with the following conditions must exist:
      * The independent contractor controls the way work is performed.
      * The independent contractor sets his/her own hours.
* The independent contractor is not restricted from taking jobs from other businesses while working for the District.
* No District employees have duties similar to the independent contractor.
* The District does not provide assistants to the independent 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 independent contractor. Independent contractor should be able to perform services without the District’s facilities, e.g., equipment, office furniture, machinery.
* The Independent contractor’s investment in his/her trade must be real, essential and adequate.
* The Independent contractor has employer identification number with the Internal Revenue Service and, if applicable, the California Employment Development Department for reporting employer payroll taxes and employee wages.
* Independent contractor is hired to provide a result and usually has the right to hire others to do the actual work.
* Independent contractor is hired for the final result and, therefore, should not be asked for progress or interim reports.
* Independent contractor is generally responsible for his/her incidental expenses.
* Independent contractor should be able to make a profit or a loss. Five circumstances show that a profit or loss is possible: (1) Independent contractor hires and pays assistants; (2) Independent contractor has his/her own office, equipment, material or facilities; (3) Independent contractor has continuing and reoccurring liabilities; (4) Independent contractor has agreed to perform specific jobs for prices agreed upon in advance; (5) Independent contractor’s services affect his/her own business reputation.

Initiator and Administrator must sign and date worksheet certifying the individual qualifies as an independent contractor.

“Independent Contractor-Guide to Using Service” Form (sample follows – Reverse Side of Worksheet above)

After an individual qualifies to provide services as an independent contractor, follow the steps described on “Independent Contractor-Guide to Using Services” which can be found on the reverse side of the “Worksheet to Determine Independent Contractor vs. Employee” form.

- **For services of $10,000 or less**, contracts are not individually submitted to the Board as the Board has authorized processing and implementation of such contracts which will be ratified by the Board by way of the Purchase Order to pay for expenditure. Agreements signed by independent contractor must be submitted to Contract, Procurement and Risk Management Services (CPRM).

- **For services of more than $10,000**, every effort should be made to obtain Board approval prior to implementation of contracted services. Contracts of more than $10,000 must be individually submitted to the Board for approval. NOTE: Payment
for services over $10,000 cannot be made until Contract/Agreement has been Board approved and work is completed.

- District has two categories of independent contractor, Basic service and professional service:
  
  o **Basic Services** – Basic services of an independent contractor are services of a short term, temporary nature, where the services can be easily delineated in the standard “boilerplate” Agreement available from CPRM. **With Basic services, the deliverables or outcomes to be provided are not complex.** Examples of Basic services would be an entertainer or food server at an event, a musician or lecturer used in a class/event setting, a professional development workshop facilitator, community extension workshop instructor, etc. Basic Services are generally under $10,000.

  o **Professional Services** – Professional services of an independent contractor are services which are complex in nature, where the deliverables or outcomes require a high level of professional expertise. With professional services, the District and the independent contractor execute a Contract/Agreement particular to the agreed upon assignment. Examples of professional services would be an attorney, auditor, professional consultant (e.g., public bond, grant writer, specialty analysis/service), construction inspector, etc.

- Independent contractors are required to enter into a written contract/agreement with District in order to receive payment. The District has two standardized Independent Contractor Agreements which it prefers to use, one for Basic Services and one for Professional Services; both can be obtained from the District’s intranet or from CPRM. Occasionally an independent contractor will provide his/her own contract/agreement, however, it must include certain District-required language. Contractor contracts/agreements must be approved by Contract Services.

  o **Required Documents** – When contracting with either category, Initiator will submit the following items, as applicable, to CPRM:

    - **Contract/Agreement Board Agenda Item(s) submitted to Board Docs** – Submitted for contracts/agreements that exceed $10,000 that require Board approval. Must be completed by Initiator.

    - **Contract/Agreement** – All independent contractor contracts/agreements must be submitted to CPRM for compliance review. Only CFO or another Board-approved signatory may sign a contract/agreement on behalf of the District; names of other authorized signers are available through CPRM. Initiator should contact CPRM for questions and assistance.

    - **Purchase Requisition to Encumber Funds** – Prepare on-line, Datatel requisition and write IN PENCIL the requisition number on the upper, right corner of the contract/agreement, e.g., “Requisition # 001111”. If a hard copy requisition is prepared, the fully-approved requisition must be included with the contract/agreement and other documents.
▪ **Vendor Information Form** – For independent contractors who are new vendors to the District. This document is completed only the first time a vendor provides services or if there is a change to the information provided. Obtain this form from the intranet or from CPRM.

▪ **Worksheet to Determine Independent Contractor Status** – This form need be completed only one time prior to first date of service. Obtain this form from the intranet or from CPRM.

**Upon completion of the Required Documents above, as applicable, Initiator will submit them to Contract & Procurement Services. Contract Services will:**

▪ Review documents and forward for additional review by legal counsel and/or insurance administrator, as appropriate. Note: Initiator must allow sufficient time for such review before document is submitted to the Board. Typically two weeks before Board Items are due (which is about four weeks before the Board meeting); however, for complex documents and/or issues, more time may be required.

▪ If Contract/Agreement is going to the Board, notify respective Executive Cabinet Member that CPRM has received the document and coordinate with Initiator and Executive Cabinet Member so they can get Contract/Agreement on Board Agenda after document review(s) is completed. Note: Initiator may be responsible to provide Executive Cabinet Member with a Board Agenda Item and paragraph. Initiator must ascertain Executive Cabinet Member’s procedure.

▪ Facilitate execution of contract/agreement (only CFO or another Board-approved signatory may sign a contract/agreement on behalf of the District).

▪ Distribute the executed contract/agreement.

▪ File the contract/agreement in the Master File / electronic tracking sheet.

**Completion of Services** – After services have been performed satisfactorily and an invoice is received, budget manager shall:

▪ Approve invoice for payment (A/P has a sample invoice form, if needed).

▪ Forward approved invoice to Fiscal Services/Accounts Payable.

The District may enter into Basic services contracts to achieve cost savings when each of the following conditions are 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;

• Where appropriate, 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 or individual who has specialized services; 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.

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

• The contract is for new functions mandated or authorized by 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**

In certain circumstances, Contracts for the services of persons who qualify as professional experts may be established 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.
Consultants

Consulting services contracts refer to all services that:

- Are of an advisory nature;
- Provide a recommended course of action or Basic 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.

EXHIBIT A (Example)

Exhibit A

(Enter Title of Position) Proposal for Services

The Independent Contractor will provide the following services:

- On-site counseling of students who are referred by Student Health Services and/or the Counseling Department. Short-term intervention, maximum of six (6) sessions per semester.
- Evaluation of personality disorders, intellectual impairment and interpersonal relationship problems only to the extent necessary to make appropriate referrals. Refer students requiring long-term therapy and/or medication management to appropriate therapists’ agencies. Maintain referral log.
- Be available for consultation regarding a student with various department staff.
- Maintain community resources and assist in making appropriate referrals.
- Report to, and consult with the Student Health Director.

The Independent Contractor has knowledge of:

- Skilled in managing a large client case load with specialties in childhood disorders including ADHD, Oppositional Defiant disorder, Conduct Disorder, Selective Mutism, Depression, Anxiety and Asperger’s/Autism.
- Experienced treating Anxiety and Depressive disorders in children, teens and adults through use of Cognitive Behavioral and Short-Term Solution Focused treatment modalities.

The Independent Contractor has the following education, training and experience:
- Licensed Marriage and Family Therapist - Board of Behavioral Sciences, California, MFC#XXXXX, Exp. XX/XX/XX.
- M.S., Counseling, Marriage and Family Therapy - California State University, Northridge, California DATE XXXX.
- Five years mental health experience serving youth and families disadvantaged by social, cultural, economic, physical and emotional barriers.
- An additional XX years' experience in office practices including office organization, customer service, professional written correspondence and computer software such as Microsoft Word/Excel and PowerPoint.

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