Contracts – Independent Contractor Services (Personal & Professional Services)

Reference:

*Government Code Section 53060; Education Code Section 88003.1*

**Authority:**

The Superintendent/President, Vice President of Administrative Services, the Director of Purchasing and Risk Management and the Director of Business Services are the ONLY persons authorized by the Board of Trustees to sign a contract as an enforceable obligation on behalf of the District—regardless of the dollar amount. Contracts and or agreements signed by any individual other than those authorized by the Board are not valid or binding on the District. Any unauthorized individual who signs a contract or agreement will be held personally responsible for the value to the contract. All contracts are subject to the requirements of federal and state codes and regulations.

For services of $8y₄₀₀ or more Board approval must be obtained prior to implementation of contracted services.

**Definition:**

The term “independent contractor” commonly is used for IRS purposes. The services of an independent contractor generally are of a limited or temporary nature. An individual must meet specific criteria, as determined by District (listed below) to be qualified as an independent contractor.

If an employer-employee relationship exists, then the individual must be hired as an employee.

(A) District has two categories of independent contractors, personal services and professional services:

a. Personal Services – Personal services of an independent contractor are services of a short term, temporary nature. With personal services, the deliverables or outcomes to be provided are not complex. Examples of personal services would be an entertainer, a musician or lecturer used in class/event setting, or a professional development workshop facilitator.

b. 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. Examples of professional services would be an attorney, auditor, architects, engineers, professional consultant (e.g., public bond, environmental consultant, specialty analysis/service), construction inspector, etc.

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

a. No District employees have duties similar to the independent contractor.

b. The independent contractor controls when, where and how work is performed.

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c. The independent contractor sets his/her own hours and is not required to devote substantially full time to performing the work.
d. The independent contractor is not required to be trained by District employees by, for example, requiring the independent contractor to attend meetings.
e. The independent contractor is not restricted from taking jobs from other businesses while working for the District, advertises his/her services to other business and does significant work for other businesses.
f. The District does not provide assistants to the independent contractor.
g. The duration of employment is for a specific job, not for a specified period of time and is not part of a continuing relationship where work is performed at frequent recurring intervals.
h. 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.
i. The Independent contractor’s investment in his/her trade must be real, essential and adequate.
j. 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.
k. The independent contract is generally responsible for maintaining workers’ compensation insurance, general liability insurance and automotive liability insurance.
l. The independent contractor is hired to provide a result and usually has the right to hire others to do the actual work.
m. The independent contractor is hired for the final result and, therefore, should not be asked for progress or interim reports. As long as the independent contractor produces the final result, the independent contractor is generally not subject to dismissal or termination.
n. The independent contractor is generally responsible for his/her incidental expenses.
o. The independent contractor should be able to make a profit or a loss. Five circumstances show that a profit or loss is possible: (1) the independent contractor hires and pays assistant; (2) the independent contractor has his/her own office, equipment, material or facilities; (3) the independent contractor has continuing and recurring liabilities; (4) the independent contractor has agreed to perform specific jobs for prices agreed upon in advance and is not paid by the hour, week, or month; (5) the independent contractor’s services affect his/her own business reputation.

(C) Personal service contracts are also permissible when any one of the following conditions is met:
a. The contract is for new functions mandated or authorized by Legislature to be performed by independent contractors;
b. The services are not available within the District or cannot be satisfactorily performed by District employees;
c. The services are incidental to a purchase or lease contract;
d. The policy, administrative, or legal goals and purposes of the District cannot be accomplished through the regular or ordinary hiring process;
e. The work meets the criteria for emergency appointment;
f. Equipment, materials, facilities, or support services could not feasibly be provided by the District; or
g. The services are of an urgent, temporary, or occasional nature.

(D) District employees, including associate faculty, cannot be contracted as an independent contractor. An individual cannot be both a District employee and an independent contractor at the same time unless all of the following apply:
   a. Will be paid from Foundation, AND
   b. It can be clearly demonstrated that the work being performed has no relationship to work being performed as a District employee and that work cannot be construed as falling within the definition of the individual’s job description or classification.

(E) PRIOR to obtaining services from an employee who has retired from the District within the last five years, approval from the Vice President of Administrative Services must be obtained to ensure that employees’ retirement benefits are not jeopardized.

The Request for Contract form can be found at Purchasing website.