

**Finance and Administrative Services**

**AP 6370      CONTRACTS – PERSONAL SERVICES (PROFESSIONAL EXPERTS,  
INDEPENDENT CONTRACTORS, AND CONSULTANTS)**

**References:**

Education Code Section 88003.1;  
Government Code Section 53060

Personal services contracts are 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 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
- The services are of an urgent, temporary, or occasional nature

The District 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 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

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- 33 • The contract includes specific provisions pertaining to the qualifications of the  
34 staff that will perform the work under the contract as well as assurance that the  
35 contractor's hiring practices meet applicable nondiscrimination standards
- 36 • The potential for future economic risk to the District from potential contractor rate  
37 increases is minimal
- 38 • The potential economic advantage of contracting is not outweighed by the  
39 public's interest in having a particular function performed directly by the District

40 The following represent types of personal services contracts the District may enter into:

41 **Professional Experts**

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

49 **Independent Contractors**

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

- 52 • The contractor controls the way in which work is performed
- 53 • The contractor sets his or her own hours
- 54 • The contractor is not restricted from taking jobs from other businesses at the  
55 same time that they are doing work for the District
- 56 • No District employees have duties similar to the independent contractor
- 57 • The District does not provide assistants to the contractor
- 58 • The duration of employment is for a specific job, not for a specified period of time
- 59 • The District does not furnish tools, training, or equipment to the contractor.  
60 Contractors should be able to perform their services without the District's facilities  
61 (e.g., equipment, office furniture, machinery)
- 62 • The contractor's investment in his or her trade must be real, essential, and  
63 adequate
- 64 • The contractor has employer identification numbers with the Internal Revenue  
65 Service for reporting

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- 66 • The individual is not presently employed by the District to do the same type of  
67 work
- 68 • Contractors are hired to provide a result and usually have the right to hire others  
69 to do the actual work
- 70 • Contractors are hired for the final result, and therefore should not be asked for  
71 progress or interim reports
- 72 • Contractors are generally responsible for their incidental expenses
- 73 • Contractors should be able to make a profit or a loss. Five circumstances show  
74 that a profit or loss is possible:
  - 75 ○ If the contractor hires and pays assistants
  - 76 ○ If the contractor has his own office, equipment, materials, or facilities
  - 77 ○ If the contractor has continuing and reoccurring liabilities
  - 78 ○ If the contractor has agreed to perform specific jobs for prices agreed  
79 upon in advance and
  - 80 ○ If the contractor's services affect his own business reputation
- 81 • Contractors can't be fired so long as they produce a result that meets the  
82 contract specifications
- 83 • Contractors are responsible for the satisfactory completion of a job or they may  
84 be legally obligated to compensate the hiring firm for failure to complete

85 **Consultants**

86 Consulting services contracts refer to all services that:

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

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

96 Office of Primary Responsibility: Finance and Administrative Services

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