

AP 6370 Contracts – Personal Service

Reference:

Education Code Section 88003.1;
Government Code Section 53060;
Labor Code Sections 2750.3 and 3353;
Public Contract Code Section 10335.5

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;
- 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.

Personal 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; and
- 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 let 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 specifically 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.

Note: AB 5, which went into effect on January 1, 2020, codified the “ABC” test for determining independent contractor status that the California Supreme Court adopted in its 2018 decision, *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 901. However, the longstanding multifactor test established in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, still applies to certain occupations. These occupations include: insurance agents; medical professionals such as physicians, dentists, podiatrists, psychologists, and veterinarians; licensed professionals such as attorneys, architects, engineers, private investigators, and accountants; financial advisors; direct sales salespersons; commercial fisherman; some contracts for professional services for marketing, human resources administrators, travel agents, graphic designers, grant writers, fine artists, freelance writers, photographers and photojournalists, and cosmetologists; licensed real estate agents; “business service providers”; construction contractors; construction trucking services; referral service providers; and motor club third party agents. Districts should consult with legal counsel if there is a question as to which test to apply to a particular contractor’s occupation.

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

- The contractor is free from the control and direction of the District in connection with the performance of work, both under the contract for the performance of the work and in fact;
- The contractor performs work that is outside the usual course of the District’s business; and
- The contractor is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

Contractors can’t be fired so long as they produce a result that meets the contract specifications.

Contractors are responsible for the satisfactory completion of a job or they may be legally obligated to compensate the hiring firm for failure to complete.

Consultants – Consulting service contracts refer to all services that:

- are of an advisory nature,
- provide a recommended course of action or personal 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.