

ADMINISTRATIVE REGULATION 6370

SOUTH ORANGE COUNTY
COMMUNITY COLLEGE DISTRICT

BUSINESS AND FISCAL AFFAIRS

CONTRACTS – INDEPENDENT CONTRACTOR, PROFESSIONAL, AND CONSULTANT SERVICES

Contracts for Independent Contractor Services

The District may enter into contracts for independent contractor services to achieve cost savings when:

- 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 includes specific provisions pertaining to the qualifications of the contractor's staff who 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 potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by the District.
- 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.

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

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- The contractor is free from the control and direction of the District in connection with the performance of the 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.
- The contractor is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

To ensure compliance of the conditions identified above, the AB 5 *Independent Contractor Checklist* in District Sharepoint under Business Services-Purchasing has been adopted to assist with the determination of employee or independent contractor status. Federal and state law places the burden of proof on the employer to show that an independent contractor relationship exists.

Contracts for Professional and Consultant Services

Contracts for the services of persons who qualify as professional experts and/or consultants may be let without competitive bidding. Professional experts and/or consultants 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 and/or consultants may be paid from available funds in the amounts deemed proper for the services rendered. Contracts for professional experts and/or consultant services include services that:

- Are of an advisory nature;
- Provide a recommended course of action or personal expertise;
- Have an end product that is basically a transmittal of information either written or verbal;
- Are deliverables such as design of a systems or plans, provide reports and analysis; or
- Are for expertise related to workshops, seminars, retreats, and conferences for which paid expertise is retained by contract.

References:

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