



**PERALTA COMMUNITY COLLEGE DISTRICT
GOVERNING BOARD POLICY**

POLICY #	TITLE	EFFECTIVE	REVISED
6.85	Professional Services Contracting	12/1/1968	Drafted 3/18/2010

PURPOSE

The purpose of this policy is to provide direction in the use of professional services contracts and to ensure a process for the monitoring and control of expenses incurred in the use of these contracts.

POLICY

Introduction

The Governing Board recognizes the District may need to obtain the services of Professional Services Contractors (Contractors) to provide expertise that may not be available with existing staff. Instances when it is more appropriate that professional services be contracted include situations concerning feasibility, cost-effectiveness and timeliness. This policy shall apply to all professionals retained on a contractual basis, including but not limited to, legal, construction and education professionals.

Under federal and State law, an independent contractor is one who renders a specified service for a specified result, under the control of the District as to work only, not as to the manner and means of accomplishing the result. If the District has the right to control the method of performance, the worker is an employee and may not be hired by contract. Professional services contracts can be used to engage qualified individuals or firms to provide temporary special services in areas such as financial, economic, accounting, engineering, legal, or administrative matters. Professional services contracts may not be used to hire persons who should be classified as employees rather than as contractors under Internal Revenue Service (IRS) guidelines, or to perform work that could be assigned to certificated, classified, or unclassified District employees.

Education Code §88003.1 regarding the use of contracted services states, “Notwithstanding any other provision of this chapter, personal services contracting for all services currently or customarily performed by classified school employees to achieve cost savings is permissible, unless otherwise prohibited, when all conditions (subsections a through d) are met. Major provisions of the code include: completing a cost/benefit analysis; non-displacement of District employees; and contract award through publicized, competitive bidding.

Requirements

1. Contactors shall be considered only upon meeting the 20 common law factors test defined by the IRS as noted in Appendix A.
2. The Board retains the right to request a competitive bid for any independent contractor or consultant service.
3. The District requires all vendors, contractors, and professional service providers comply with contractual insurance requirements and provide evidence of insurance. A contract cannot be executed, and the vendor cannot receive payment, unless and until evidence of compliant insurance is provided.
4. Once an RFP process has been completed and a contract awarded, that RFP may no longer be used to select a vendor to perform work under the same scope of work. A new RFP process must be initiated to select a new contractor.
5. Board approval will not be granted for any professional services contracts where the funds have not been designated and/or encumbered for the services.
6. All contracts executed to retain professionals shall be in writing.

Professional Services Agreement

All contracts for services shall be duly passed and adopted by majority vote of the Board prior to the start of work. Should an emergency exist, the Chancellor has the authority to invoke Board Policy 6.83 which allows for Board ratification of a prior Chancellor action taken to avoid delay or disruption to a project.

The District shall not maintain a contractual relationship with an independent contractor or consultant for more than two consecutive years, unless and until the following has taken place:

- Competitive bid process
- Staff analysis of alternatives
- Successful prior performance with the District, including completing deliverables as contracted
- Completion of Contractor Disclosure Affidavit
- Board approval

Prior to any contract being executed, the agreement shall be reviewed, authorized and approved in accordance with District policies, procedures and requirements for procurement of goods and services. All contracts shall be in writing, with clearly written deliverables that adhere to the agreed upon scope of work. Business expenses and incidentals are expected to be included in the vendor proposal. The District will not separately reimburse business expenses.

Contracts where a contractor provides services to the District at no charge may require processing through Purchasing, especially if the services can be valued on a monetary basis and/or expose the District to potential liability. Contracts not involving direct expenditure of District funds shall be presented to the Board for adoption or ratification annually or in such earlier interval as District administration chooses.

Small Business Program

The Board has established an annual overall program goal of 25 percent participation for small local business enterprise (SLBE) and small emerging local business enterprise (SELBE) firms, with a maximum five percent bidding preference. The preference is only used for computation purposes to determine the successful bidder, the contract is awarded at the actual bid amount. The preference will be five percent of the bid amount of the lowest responsive, responsible bidder and may not exceed \$50,000 for any bid. All SBE firms listed, either as prime contractors or subcontractors, must be certified.

Vendor Performance

Monies expended for procurement purposes, whether general fund, grant or otherwise comes with the expectations that the Governing Board and District management are expending these funds in the best interest of the public trust. In that regard, all contractual services shall be undertaken with the goal that the project will be completed within budget and on time.

The Governing Board expects that the District will not only consider the lowest responsive bidder, but also the lowest responsible bidder. Management shall do its due diligence on reference checks and past performance of a vendor before entertaining a proposal from a contractor or consultant.

The District shall have a system to evaluate the performance of contractors and consultants that are awarded contracts. The system shall consider the vendor's performance for the entire length of the contract and evaluate the deliverables produced by the vendor. The District shall include a copy of the Vendor Performance Report template in the initial request for service to all potential vendors. At the completion of a contract term, all District cost centers shall submit to the Office of the Inspector General a Vendor Performance Report. Contracts for professional services

shall be subject to review and/or audit(s) by the Inspector General, internal auditor, external auditor or other auditing entity. Final and/or periodic payments shall be made after validation of satisfactory completion of the job or interval tasks.

Providing misleading or false information and documentation to the District shall exclude a vendor from contracting with the District. Contracts may be terminated should the District determine a vendor has violated any of the District's policies related to a drug free workplace, non-discrimination, sexual harassment, and civility and mutual respect, in addition to the Public Contracts Code and District administrative procedures governing procurement.

District Management

District employees who are authorized to provide consultant services to the District shall be retained as an employee on special assignment and not as a vendor. To ensure fair and equitable opportunities for internal staff and the general public, independent contractors and consultants shall not be hired as District employees until one year after their contract services have ended.

In the event there is evidence of malfeasance, the District officer, college officer or employee who entered into the subject contract shall be personally liable for any and all monies that the District paid out as a result of his or her malfeasance.

It is the intent of the Governing Board that an accompanying Administrative Procedure to Board Policy 6.85 Professional Services Contracting be developed by management and confirmed by the Governing Board not later than 30 days from approval of this policy.

Disclosure Requirements

The District promotes fair and honest competition in awarding of contracts. To achieve this impartiality, vendors are required to complete a Contractor Disclosure Affidavit before each contract is awarded.

Employees also must complete an Employee Affidavit disclosing the names of business partners, and interests in a business entity or real property that may do business with the District during your employ.

RESOURCE CONTACT

Vice Chancellor General Services is the responsible service center for procurement

PERALTA COMMUNITY COLLEGE DISTRICT SOURCE	STATE/FEDERAL ENACTMENT
Amended: Board of Trustees 10/28/2010 Approved: Board of Trustees 8/13/1996 Approved: Administrative Procedure 6.85, 8/13/1996 Replaced: Board Policy 5.55 12/1/1968	Internal Revenue Code §3401 Education Code §81655, et. seq. Public Contract Code §20651, et. seq.