
**Kern Community College District
Administrative Procedure
Chapter 6 – Business and Fiscal Services**

AP 6370 Contracts – Personal Services

References:

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

Note: This procedure is **legally required**.

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; or
- 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 specially 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.

Consultants – Consulting services 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.

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

- 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; 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.

Independent Contractor Checklist

A. Required documentation for contractors operating as corporation, non-profit entity, partnership, association or Doing Business As (DBA). If the contractor provided a product or supplies, rather than services, complete Item 3 only.

1. KCCD's Agreement with Independent Contractor or a specially negotiated agreement. Either must be signed by the Assistant Chancellor, Business Services and Director of Human Resources.
2. Business license, if required, fictitious business name statement, business card and/or business letterhead. Provide any of the above.
3. Brief description of services provided.

IF THE RESPONSES/DOCUMENTATION FOR NUMBERS 1-3 OBVIOUSLY SUPPORT THE CATEGORIZATION OF AN INDEPENDENT CONTRACTOR, YOU MAY STOP. YOU DO NOT NEED TO RESPOND TO OR DOCUMENT ANY OF THE FOLLOWING COMMON LAW QUESTIONS.

B. "Common Law Questionnaire" Please complete the following IRS 20 Common Law Questions. Also, Educational Administrators carefully read the "Who are Employees" document before completing the questionnaire and refer to Page 10 of "Who Are Employees" for factors that indicate the right to direct and control. Where your answer is 'yes', please provide a detailed rationale.

IF THE ANSWERS ARE 'NO' FOR ALL QUESTIONS EXCEPT 15 & 16, THE POSITIONS SHOULD BE AN INDEPENDENT CONTRACTOR.

1. If a contractor is required to comply with instructions concerning when, where, and how he/she is to complete the work, that individual is generally an employee. Does the District require the contractor providing services to comply with instructions concerning when, where, and how the work is done? NO _____ YES _____ (If yes, please explain)

2. Training workers indicates that the workers are expected to perform their work in a specific manner or method. Dose the District require the contractor to receive training? NO _____ YES _____ (If yes, please explain)

3. If the contractor's services are integrated into the business operations of the District, this generally shows that he/she is subject to direction and control. Are the services performed integrated into the KCCD business operations? NO _____ YES _____ (If yes, please explain)

4. If the services must be performed personally, it generally means that the employer will exercise control over the methods. Is the contractor required to personally perform services? NO _____ YES _____ (If yes, please explain)

5. Contractors may hire, supervise and pay other workers. This is indicative of an independent contractor status. Is the District responsible for supervising and paying any of the contractor's assistants? NO _____ YES _____ (If yes, please explain)

6. A continuing relationship between a contractor and the District is a factor indicating control. Is the relationship between contractor and KCCD a continuing relationship (year-to-year)? NO _____ YES _____ (If yes, please explain)

7. Does KCCD dictate the hours of work? NO _____ YES _____ (If yes, please explain)

8. If a contractor is compelled to devote full attention and time to the performance of District business and is not free to attend to any of his/her other gainful work, then essentially full-time hours are required. Is contractor required to work full-time to provide services to KCCD?

NO _____ YES _____ (If yes, please explain)

9. Is the majority of work performed at a designated location at KCCD?

NO _____ YES _____ (If yes, please explain)

10. An employee/employer relationship is indicated when the worker is not free to follow his/her own pattern of work. Does the District determine the steps or sequence in which the work is completed? NO _____ YES _____ (If yes, please explain)

11. If a worker is required to submit oral or written reports, this indicates a desire to control by the District. Is contractor required to provide oral or written reports? NO _____ YES _____ (If yes, please explain)

12. Is contractor paid by the hour, week, month, or agreed contract amount, using installment payments? Please explain:

13. When business and traveling expenses are directly paid by the District rather than reimbursed according to the contract, then the contractor is generally considered to be an employee. Is business or traveling expenses directly paid by KCCD? NO _____ YES _____
(If yes, please explain)

14. When the District furnishes the significant tools, materials and other equipment, and employer/employee relationship exists. Does contractor require significant use of KCCD equipment, supplies, and/or tools to complete work? NO _____ YES _____ (If yes, please explain)

15. Does contractor have a significant investment in his/her own facilities and equipment? NO _____ YES _____ (If no, please explain)

16. The person who can realize a profit or suffer a loss as a result of his/her services is generally an independent contractor. Is contractor capable of gaining a profit or suffering a loss from the contract with KCCD? NO _____ YES _____
(If no, please explain)

17. Persons who work for a number of individuals or firms at the same time are generally independent contractors. Does the contractor work solely for the District during the calendar year? NO _____ YES _____ (If yes, please explain)

18. The fact that a person makes his/her services available to the general public on a regular basis usually indicates an independent contractor relationship. Does the District structure the work in such a manner as to require full-time hours for the calendar year or during the contract period? NO _____ YES _____
(If yes, please explain)

19. An independent contractor cannot be discharged so long as he/she produces a result that meets contract specifications. Does KCCD have the right to terminate contractor for reasons not based on contract specifications? NO _____ YES _____ (If yes, please explain)

20. To be able to terminate a working relationship without incurring a liability is a factor indicating that an employee/employer relationship exists. Does KCCD have the right to terminate without liability? NO _____ YES _____ (If yes, please explain)

IRS SECTION 530-SAFE HARBOR RULE

The "Safe Harbor" rules apply where past practice in an industry recognizes a trade, profession, or service provider as being an independent contractor. If the decision to categorize this individual is based on known industry practice, please provide the required documentation/information to justify this decision. Below is a list of the information required to apply the Safe Harbor rule:

- 1. List other California Community Colleges that categorizes individuals working in a similar capacity as independent contractors. Please list names and current title of the contact person. Establish and document when the practice began. Collect any written procedures or policies that the school may have.
- 2. Describe any personal experience and knowledge with this practice within the trade or profession gained from interviews, industry tax literature, seminars, legal readings, etc. that would substantiate this categorization. (Please attach documentation)

My signature below indicates my agreement that this individual is appropriately categorized as an Independent Contractor.

Educational Administrator (Signature & Date)

Director of Human Resources (Signature & Date)

I have read the Independent Contractor Checklist and agree with the categorization of Independent Contractor for the services that I will be providing Kern Community College District.

Independent Contractor (Signature & Date)