



## SAN DIEGO COMMUNITY COLLEGE DISTRICT

### Administrative Procedure

### CHAPTER 6 – BUSINESS AND FINANCIAL SERVICES

### AP 6330.8 CONTRACTS – CONSULTANT

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Office of Primary Responsibility:

Vice Chancellor of Business Services  
Director of Purchasing and Contract Services

The purpose of this procedure is to provide a legal and systematic method by which independent contractors/consultants will be retained by the San Diego Community College District.

This procedure is applicable to all contracts for consultants hired as Independent Contractors as distinguished from the employees of the District. For purposes of procedural separation and legal consideration, this procedure addresses the definition of consultants as distinguished from employees:

#### SCOPE

1. Employee versus Independent Contractor (Consultant)
  - a. Under common law rule, a worker is an employee if the District has the right to direct and control the worker in the way he/she works, both as to the final results and as to the details of when, where and how the work is to be done. The District need, not actually exercise, the control; it is sufficient that the District has the right to do so. Again, if the assignment/project requires personal service and the District may exercise control over the hours of work, place of work, and how the work is to be performed, such arrangement constitutes an employee-employer relationship.
  - b. For procedures regarding employment, refer to Human Resources procedure.
  - c. The following are some characteristics of an Independent Contractor/Consultant relationship:
    - Services provided are not temporarily replacing duties that are a regular part of the District's business operations.
    - The agreement entered into between the consultant and the District focuses on an end product or objective. The fee charged by the consultant firm includes expenses associated with completion of the project. Consultant may make a profit or suffer a loss.
    - An Independent Contractor will typically engage in other gainful contracts and may not typically devote his/her full-time to the business of the District.

## 2. Consultant Types

### a. Consultants/No Bid Required

- If the contemplated value of work to be done is less than \$15,000.00 in total, no bid is required. In addition, if a consultant is to provide "special services and advice," without regard to cost, no bid is required.
- Independent contractors may be hired to provide to the District "special services and advice in financial, economic, accounting, engineering, legal, or administrative matters." Such persons must be "specially trained and experienced and competent to perform the special services required," and qualified services must not be available to the District from any other public agency. (Gov. Code Section 53060; Darley v. Ward (1982); CSEA v. Sunnyvale (1973)). Questions regarding the application of Gov. Code Section 53060 should be referred to the District Purchasing and Contract Director.

### b. Consultants/Bid Required

- All consultant services, which do not qualify as "special services and advice," and exceed \$15,000.00 in value, are subject to the competitive bid requirements of the California Public Contract Code. However, these individuals/firms must still qualify as an independent contractor as specified in paragraph 1, above.

## **REGULATIONS, LIMITATIONS AND CONDITIONS**

### 1. Concurrent Assignment

Consistent with District policy and practice, no current employee may be contracted with as a consultant, and vice versa; that is, no one may hold concurrent status of employee and consultant. Government Code Section 1090 applies to certain of these circumstances.

### 2. Consultant versus Bidder

Consultants providing specific assistance in the development of Request for Bid/Proposals, or of contracts for services or supplies are prohibited from participating in the competitive selection process and/or being selected as a provider of those services or products (Gov. Code Section 1090).

### 3. Accounting

Typically, the proper budget account codes to use for the payment of consultants are: 5303 for professional services, and 5161 for other contracts.

### 4. Scope of Service/Deliverables

The scope of service should be specific as to expected outcomes, which include required status of reports, final reports, Board presentations, completion of defined tasks, and conclusion of project. The descriptions of phases and benchmarks for progress payments must be clearly measurable and readily able to be evaluated to ascertain and authorize

proper payments. In addition, the burden for precision and clarity in defining scope, if later disagreement or dispute should arise, is borne by the District. Vague references command broad, indefinite interpretation. Sample Agreement and Exhibit defining the scope of professional services are down-loadable from [Purchasing's website](#).

5. Time of Performance

The time of performance should be as of, or through a specific date, and should always convey the temporary project orientation of the contract.

6. Payment Schedules

For the deliverable(s) as defined, there will be payment due (consideration). Payment should follow a reasonable linkage to the scope of services defined therein, and should consider the duration of a project. That is, if the service involves one clear and easily defined outcome, and the time of performance is less than sixty (60) days, it would be reasonable to contract for the full payment of the contract upon acceptable completion. However, if a project is separated into several clearly definable phases or sub-parts, each with a duration of thirty (30) days or more, then payment may be scheduled in appropriate increments as it progresses through to total project completion. Some examples of payment schedules are as follows:

- a. Training Session I, Sept 15 \$500.00  
Training Session II, Oct. 22 \$500.00  
Training Session III, Nov. 22 \$500.00  
Training Session IV, Dec. 23 \$500.00  
or
- b. Phase I – Data Collection \$1,500.00  
Phase II – Analysis & Draft Recommendations \$1,500.00  
Phase III – Finalized Recommendations \$3,000.00  
Phase IV – Presentation to the Board \$1,500.00  
or
- c. Progress payments billable at approved hourly rate for services requested and rendered, and substantiated by formal invoice specifying the particular services rendered. Such payments should be no more frequent than on a monthly basis.  
or
- d. Total payment to be authorized at satisfactory completion of project.

7. Hourly Rates

- a. Hourly rates for consultants (e.g., specialized legal services) require minor modification to the basic Agreement. Article 3 should be modified by changing the language following the work "Agreement" to: "... the rate of \$\_\_\_\_\_/hr., not to exceed a total amount of \$\_\_\_\_\_, without prior written approval of the District's Purchasing and Contract Director."
- b. In such cases, it is then appropriate to use similar language as to Example 3 above for payment schedule.

8. Insurance

All consultants hired must present a certificate of insurance indicating coverage for workers' compensation. Other forms of insurance may be required or requested, depending on the nature or scope of services to be performed.

9. Administrative Recommendations and Approval

Contracts for consultant services may be recommended/requested via the normal Requisition process. Requisitions must include the approval authority of Cabinet-level Officer of the district, or his/her designee. Final approval and formal contract obligation must be processed as a Purchase Order/Agreement authorized by the Purchasing and Contract Services Director, and must be processed and issued prior to the onset of any services.

**IMPLEMENTATION**

1. Requisition

Initial development of project scope, designated funding, and assignment of project administrator are to be submitted with Requisition. If services are to be bid, additional specifications should follow. If no bid is necessary or appropriate, contact with desired consultant may yield a fully-developed recommended Agreement.

2. Contract Review

Purchasing and Contract Services will review and finalize terms, conditions and requirements with site/project administrator and consultant. All provisions requiring legal review will be expedited by Purchasing. Additionally, consultant will be required to file a Conflict of Financial Disclosure at the time an agreement is executed.

3. Payments

All payments against a consultant Purchase Order/Agreement will be handled as partial or total payments against a Blanket PO, with approval/authority from the site/project administrator.

4. Exceptions

Professional architectural and engineering services required by Facilities Services, serving as independent contractors/consultants, shall meet the tests contained in paragraph 1, under section SCOPE above, and shall otherwise be subject to the terms, conditions, and provisions of SDCCD Facilities Policy.

References: BP 6330  
Public Contract Code 20651 et seq.  
Government Code 1090 and 53060  
[Purchasing's Website](#)

Supersedes: 8500.2, 7/1/01

Approved by Chancellor:

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Date

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Constance M. Carroll, Ph.D.

Reviewed by Cabinet on 9-22-09 and approved by concurrence.