

Multnomah Education Service District

Code: **DJ/DJC-AR(2)**
Adopted: 11/16/10
Revised/Readopted: 7/25/11; 4/07/14

Purchasing Procedures - Personal Services

Personal Services

“Personal Services” means specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment.

“Personal Services” include services from an accountant, attorney, teacher, consultant (generally), broadcaster, provider of special education-related services and provider of human custodial care services. “Personal Services” does not include routine clerical, office support or payroll functions, equipment installation, hotel meeting space or trade services such as painting and custodial duties.

A “personal services contract” does not include a contract for legal counsel services for the MESD Board of Directors.

A “personal services contract” does not include a contract for the services of an architect, engineer, land surveyor or provider of related services as defined in ORS 279C.100.

Contractors

Personal services contractors fall into two categories:

1. Independent contractors, also known as “independently established business,” and
2. Contracted employees.

The determination of contractor category is ultimately made by the courts, the IRS or by BOLI, and is not the purview of MESD; however, in order to utilize appropriate contract language and appropriate contract selection processes, MESD staff shall apply the criteria listed under “Independent Contractors” in this administrative regulation, when considering contractors.

I. General Provisions

- A. Human Resource Services is responsible for all personal services contracts with contractors who do not qualify as independent contractors. Personal services include workshop speakers, consultants, test graders and similar services.
- B. Legal Services is responsible for reviewing or drafting proposed contracts and templates and reviewing any proposed contracts from vendors or contractors.
- C. Human Resource Services will respond to a submitted Authorization to Fill Vacancy within five to 10 business days after actual receipt of the Authorization to Fill Vacancy.
- D. There must be a written contract or other legally binding document signed by all parties and on file prior to receipt of services.

- E. Human Resource Services and Legal Services shall develop and annually review a list of qualified individuals and agencies which can provide a variety of personal services. Evaluation criteria in part III A. of this administrative regulation will be used when choosing a particular provider from the list.

II. Requests for Personal Services

- A. Department directors will submit an Authorization to Fill Vacancy to Human Resource Services indicating a need for personal services, when the contractor will be employed directly by MESD and the contractor does not qualify as an independent contractor. The Authorization to Fill Vacancy will contain specifics including when, why and length of time the services are required.
- B. Human Resource Services will review the request and determine:
 - 1. If the need is for direct employment as an MESD employee. Direct employment includes recall of an employee on layoff, reemployment of a PERS retiree, temporary employment and employment pursuant to a grant;
 - 2. If the need will be filled by a contract with a bona fide independent contractor (ORS 670.600). Independent contractors must meet a specific set of standards to qualify as true independent contractors and may be individuals or private businesses;
 - 3. If the need is for services but not “personal services.” These are services which include routine clerical, bookkeeping and general custodial job functions. Service providers may be selected from a pre-approved list of individuals and agencies which can provide the needed services. Other requests will be forwarded to Business Services for processing.

C. Short Term Employment

- 1. **Recall** - Recall is governed by the AFSCME or MESDEA bargaining agreements. AFSCME unit members have recall rights for 18 months and MESDEA unit members for 27 months.
- 2. **PERS Retiree** - Reemployment of PERS retirees, including compensation, is governed by Board administrative regulation GCPC-AR - Reemployment of PERS - Retired Staff.
- 3. **Temporary Employees** - The definition of temporary employee is governed by AFSCME and MESDEA bargaining agreements. Temporary employees are excluded from the bargaining unit for set periods of time only. Exceeding a specified time limit places the employee in the bargaining unit with salary and health benefits established for that unit.

Temporary employees are excluded from the AFSCME contract for a total of 149 days per year. There is no time limit if the employee is filling in for a “regular” employee who is on approved leave of absence.

Temporary employees are excluded from the MESDEA contract for a total of 95 days per year.

- 4. **Grants** - Grant partners, including other units of local government, private businesses and/or individuals will be selected prior to grant application pursuant to Board administrative regulation DFC-AR - Grants Management. Human Resource Services will determine if provided services will be through short term direct employment or as an independent contractor.

D. Independent Contractors

Independent contractors are individuals or businesses which meet a specific set of standards (ORS 670.600). Independent contractors will be typically used when current or in some cases former MESD employees do not possess the requisite knowledge, skills or abilities to complete the required tasks or deliver specialized services. They will also be used when there are insufficient numbers of current MESD employees to complete the required tasks or deliver specialized services.

To be considered an independent contractor, a worker must (among other things) maintain an independently established business, which is defined as meeting any three (3) of the following five (5) requirements:

1. The person or contractor maintains a business location:
 - a. That is separate from the business or work location of the person for whom the services are provided; or
 - b. That is in a portion of the person's residence and that portion is used primarily for the business.
2. The person or contractor bears the risk of loss related to the business or the provision of services as shown by factors such as:
 - a. The person or contractor enters into fixed-price contracts;
 - b. The person or contractor is required to correct defective work;
 - c. The person or contractor warrants the services provided; or
 - d. The person or contractor negotiates indemnification agreements or purchases liability insurance, performance bonds or errors and omissions insurance.
3. The person or contractor provides contracted services for two (2) or more different persons within a twelve-month period, or the person routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
4. The person or contractor makes a significant investment in the business through means such as:
 - a. Purchasing tools or equipment necessary to provide the services
 - b. Paying for the premises or facilities where the services are provided; or
 - c. Paying for licenses, certificates or specialized training required to provide the services.
5. The person or contractor has the authority to hire other persons to provide or to assist in providing the services and has the authority to fire those persons.

The requirement to maintain an independently established business does not apply if the person files a Schedule F as part of an income tax return and the person provides farm labor or farm services that are reportable on Schedule C of an income tax return.

Note: To be considered an independent contractor under ORS 670.600, a worker must meet all the criteria of that law not just the requirement concerning an “independently established business.”

Keep in mind that certain agencies must follow different worker classification criteria. Additional agency-specific information on worker classification is available from Workers’ Compensation Division and Bureau of Labor and Industries.

III. Competitive Review and Selection

- A. Human Resource Services will work with the program or department to establish the criteria upon which potential service providers will be evaluated and selected. Criteria can include but are not limited to one or more of the following:
 - 1. A service is time sensitive;
 - 2. The vendor or contractor has provided previous acceptable services to MESD;
 - 3. The number and availability of particular vendors or contractors;
 - 4. The vendor or contractor has all necessary licenses, permits, etc.;
 - 5. Potential penalties imposed upon MESD if the service is not timely provided;
 - 6. Availability of references;
 - 7. Number of years in the business and capability to perform required services;
 - 8. Approach and philosophy used in providing required services;
 - 9. Geographic proximity to the project or area where the services are to be performed;
and
 - 10. Costs.

IV. Competitive Review and Selection – Independent Contractors

- A. \$10,000 or less

Departments may select the service provider based on a reasonable, efficient process of the department’s choice. Opportunities or events may be posted on the MESD web site. There must be a signed contract or other legally binding document prior to commencement or receipt of services.

- B. 10,001 – \$150,000

- 1. Develop an RFP for the service(s). Criteria used to evaluate proposals must be listed in the RFP. Whenever possible in the RFP, assign the weighting or value to each criterion (e.g., 25 percent, 10 points).
- 2. Post the RFP on the MESD Web site. Send the RFP to any applicable ListServ(s) and make any appropriate direct contacts with potential service providers. Place an advertisement in appropriate publishing media (e.g., *Daily Journal of Commerce*, the *Oregonian*). Work with the Business Services to place an ad in the *Daily Journal of Commerce*.
- 3. Obtain a minimum of three responses or document “best efforts” to obtain three responses.
- 4. Wait a minimum of five calendar days before selecting the service provider(s).

5. Select using the criteria described in the RFP, and document how the selection was made by creating a tabulation showing the scores received by all proposals.
6. Obtain a signed contract or other legally binding document prior to commencement or receipt of services. Upload the RFP, responses, selection summary document and contract or agreement into the contract management database. Once the contract or agreement has been approved and signed, send it to the vendor for signature and upload the fully executed contract into the contract management database prior to the commencement or receipt of services.

C. \$150,000+

This requires a sealed proposal process. Contact the Business Services for assistance.

D. Documents including evaluation criteria and advertising method(s) will be retained using the schedule in DJ/DJC-AR(5) - Purchasing Procedures.