

Personal Services Contracts

1. Personal Services Contracts Defined

- a. Personal services contracts include, but are not limited to: a contract or member of a class of contracts, that the local contracting agency's Local Contract Review Board (LCRB) has designated as a personal services contract pursuant to Oregon Revised Statute (ORS) 279A.055. Personal services include, but are not limited to, the following:
- (1) Contracts for services performed as an independent contractor in a professional capacity (e.g., services of an accountant, attorney, data processing consultant, etc.);
 - (2) Contracts for services as an artist in the performing or fine arts (e.g., photographer, painter, etc.);
 - (3) Contracts for services that are specialized, creative and research oriented;
 - (4) Contracts for services as a consultant as defined by Oregon Administrative Rule (OAR) 137-048-0110(1);
 - (5) Contracts for educational consulting services;
 - (6) Contracts for food service management.

2. Eligibility

The district will follow ORS 670.600, Public Employees Retirement System (PERS) rules OAR 459-010-0030 and Internal Revenue Service (IRS) Ruling 87-41 in determining whether the individual or business entity qualifies as an independent contractor or is an employee of the district. A valid independent contractor must meet all eight of the following points:

- a. State requirements¹:
- (1) The contractor must be free from the direction and the control of the employer;
 - (2) The contractor must obtain required business licenses;
 - (3) The contractor must furnish necessary tools and equipment;
 - (4) The contractor has authority to hire and fire employees;
 - (5) The contractor is paid on completion of portions of projects or on a retainer basis;
 - (6) The construction contractor must be registered under ORS Chapter 701. (For more information call the Construction Contractors Board at 503-378-4621 in Salem.);
 - (7) The contractor must file appropriate business tax returns;
 - (8) The contractor must represent to the public that the labor or services are provided by an independent business.

¹See ORS 670.600 for complete listing.

b. PERS requirements:

In determining whether an individual is an employee or independent contractor for PERS contribution purposes, the district will consider the following factors:

- (1) Instructions. An employee must comply with instructions about when, where and how to work. Even if no instructions are given, the control factor is present if the employer has the right to control how the work results are achieved;
- (2) Training. An employee may be trained to perform services in a particular manner. Independent contractors ordinarily use their own methods and receive no training from the purchasers of their services;
- (3) Integration. An employee's services are usually integrated into the business operations because the services are important to the success or continuation of the business. This shows that the employee is subject to direction and control;
- (4) Services rendered personally. An employee renders services personally. This shows that the employer is interested in the methods as well as the results;
- (5) Hiring, supervising and paying assistants. An employee works for an employer who hires, supervises and pays workers. An independent contractor can hire, supervise and pay assistants under a contract that requires him/her to provide materials and labor and to be responsible only for the result;
- (6) Continuing relationship. An employee generally has a continuing relationship with an employer. A continuing relationship may exist even if work is performed at recurring although irregular intervals;
- (7) Set hours of work. An employee usually has set hours of work established by an employer. An independent contractor generally can set his/her own work hours;
- (8) Full-time required. An employee may be required to work or be available full-time. This indicates control by the employer. An independent contractor can work when and for whom he/she chooses;
- (9) Doing work on employer's premises. An employee usually works on the premises of an employer, or works on a route or at a location designated by an employer;
- (10) Order or sequence set. An employee may be required to perform services in the order or sequence set by an employer. This shows that the employee is subject to direction and control;
- (11) Oral or written reports. An employee may be required to submit reports to an employer. This shows that the employer maintains a degree of control;
- (12) Payment by hour, week, month. An employee is generally paid by the hour, week or month. An independent contractor is usually paid by the job or on a straight commission;
- (13) Payment of business and/or traveling expenses. An employee's business and travel expenses are generally paid by an employer. This shows that the employee is subject to regulation and control;
- (14) Furnishing of tools and materials. An employee is normally furnished significant tools, materials and other equipment by an employer;
- (15) Significant investment. An independent contractor has a significant investment in the facilities he/she uses in performing services for someone else;
- (16) Realization of profit or loss. An independent contractor can make a profit or suffer a loss;

- (17) Working for more than one employer at a time. An independent contractor is generally free to provide his/her services to two or more unrelated persons or firms at the same time;
- (18) Making service available to general public. An independent contractor makes his/her services available to the general public;
- (19) Right to discharge. An employee can be fired by an employer. An independent contractor cannot be fired so long as he/she produces a result that meets the specifications of the contract;
- (20) Right to terminate. An employee can quit his/her job at any time without incurring liability. An independent contractor usually agrees to complete a specific job and is responsible for its satisfactory completion, or is legally obligated to make good for failure to complete it.

b. IRS requirements:

Additionally, in determining employee or independent contract status for purposes of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA) or for federal income tax withholding from wages, the district will consider:

- (1) Behavioral control. A worker is an employee when the district has the right to direct and control the worker;
- (2) Financial control. A worker is an independent contractor if he/she can realize a profit or incur a loss. The individual may also be an independent contractor if he/she is not reimbursed for some or all business expenses, especially if those expenses are high or if he/she has a significant investment in his/her work;
- (3) Relationship of the parties. Facts weighed by the district will include any written contracts describing the relationship the parties intended to create; the extent to which the worker is available to perform services for other similar businesses; whether the district provides the worker with employee-type benefits, such as insurance, vacation pay or sick pay; and the permanency of the relationship.

3. Personal Services Contracts - Procurement Requirements

The district contracts follow ORS Chapter 279, Public Contracts and Purchasing.

4. ITB/RFP Requirements

- a. The district contracts follow ORS Chapter 279, Public Contracts and Purchasing.
- b. Unless otherwise specified in rules adopted pursuant to ORS 279A.065, the LCRB will give notice at least seven days before the solicitation closing date.
- c. All advertisements shall describe at minimum the requirements under OAR 137-047-0300 (3):
 - (1) Where, when, how and for how long the solicitation document may be obtained;
 - (2) A general description of the goods or services to be acquired;
 - (3) The interval between the first date of notice and closing, which will be at least seven days, unless a shorter period is in the public interest and it will not substantially affect competition;

- (4) The date that persons must file applications for prequalification if prequalification is a requirement and the class of goods or services is one for which persons must be prequalified;
- (5) The office where contract terms, conditions and specifications may be reviewed;
- (6) The name, title and address of the individual authorized by the contracting agency to receive offers;
- (7) The scheduled opening; and
- (8) Any other information the contracting agency deems appropriate.

5. Screening and Selection Procedures

The district contracts follow ORS Chapter 279, Public Contracts and Purchasing.

6. Documentation

Documentation providing evidence of competition shall be maintained by the district for all contracts entered into by the district.

7. Fingerprinting

If the scope of the work performed by a contractor(s) or his/her employee(s) may result in direct, unsupervised contact with students, he/she will be required to submit to fingerprinting and criminal records checks as required by law.

8. Payment

Payment will be made only upon completion of the performance of specific portions of the project or on the basis of an annual or periodic retainer as specified by the district in the personal services contract.