

## **Personal Services Contracts/Independent Contractors**

Determining the Nature of the Personal Services Contract- Personal Services Contracts can be used when the services required meet, but are not limited to, the following general categories:

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;
5. Contracts for educational consulting services.

Personal services contracts are not appropriate in the following instances:

1. Contracts, even though in a professional capacity, if primarily for a product;
2. Contracts with a temporary service to supply labor which is of a type that can be done by any competent workers (e.g., data entry, key punch, janitorial, security guards, spraying, landscape maintenance services contracts, etc.);
3. Contracts with a management contractor that primarily supplies labor that can generally be done by any competent or skilled worker (e.g., crowd management, training, courier, data and collection surveys, etc.);
4. Contracts for trade-related activities considered to be labor and materials contracts;
5. Contracts for services of a trade-related activity to accomplish routine, continuing and necessary functions, even though a specific license is required to engage in the activity (e.g., repair and maintenance of all types of equipment and structures);
6. Contracts exempt from competitive bids or proposals by ORS 279.015.

In these instances, the agency will do business with a legitimate vendor and follow the agency's purchasing procedures.

## Determining the Status of the Personal Services Provider

It is critical that the proper status be determined for the individual with whom a department wants to do business. Essentially, the choices are:

1. **A business entity.** An entity with a Taxpayer ID number other than an individual social security number. These entities do not need to demonstrate that they qualify as an independent contractor. Therefore, a personal services contract is the only required contract between the provider and the agency. However, departments must also complete the necessary purchasing process as prescribed in current fiscal services procedures;
2. **An independent contractor.** There are a multitude of tests that a potential provider must comply with to be considered an independent contractor. Any individual who does not have an IRS recognized Tax ID number must be fully certified as an independent contractor. Both the program and the service provider will be required to complete and authorize the classification of an independent contractor. These documents will be reviewed and approved by the fiscal services division before a personal services contract can be entered into. Upon entering this agreement, the standard purchasing procedures will commence.
3. **A temporary employee.** In many instances, individuals cannot qualify as independent contractors, therefore, they must be considered employees of the district. The procedures for hiring and compensating a temporary employee can be found in the *Personnel Procedures Manual*.

### Certifying an Individual as a Business Entity

In order for an individual to be considered a business entity, a Federal Tax ID number that is not a 7 digit social security number must be provided. When presented with this number, a vendor file can be established under the business name and a 1099 will not be issued at calendar year end.

### Certifying an Individual as an Independent Contractor

The IRS, PERS and the state of Oregon have all established criteria which an individual must meet before the district can identify and make payments to them as an independent contractor.

Prior to completing the personal services contract the provider must authorize in writing that they meet all of the criteria listed below:

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 will be paid on completion of portions of projects or on a retainer basis;

6. Any 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;
9. The contractor pays for all travel expenses related to performing the services stipulated;
10. The contractor works for more than one person or firm;
11. The contractor makes his/her services available to the general public;
12. The contractor cannot be fired by the agency as long as he/she produces the results that meets the specifications of the contract;
13. The contractor 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.

When an individual does not meet the above, they are considered to be an employee and must be hired under all the terms and conditions of an agency employee.