



Book	Administrative Procedures
Section	Chapter 6: Business and Fiscal Affairs
Title	Contracts for Services
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**A.** The District may enter into services contracts which may encompass either personal services or professional services. It is important to recognize such a distinction between personal and professional services as Government Code 53060 permits greater latitude in contracting with a “professional specialized services” providers without a formal legal competitive procurement process in the areas of financial, accounting, engineering, legal and administrative matters if such persons are specially trained and experienced. Although, it is the District’s policy and best practice to procure such professional services competitively if it provides greater benefit to the organization and is feasible for what is needed to be procured at the time.

Such contracted services are engaged 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.

**B. 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.

**C. 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.

Also see the District's Business Operations Policy and Procedures Manual PP 04-08

**D. Independent Contractors**

To be an independent contractor, substantial conformance with the following conditions must exist:

- The contractor controls the way in which work is performed.
- The contractor sets his/her own hours.
- The contractor is not restricted from taking jobs from other businesses at the same time that they are doing work for the District.
- No District employees have duties similar to the independent contractor.
- The District does not provide assistants to the contractor.
- The duration of employment is for a specific job, not for a specified period of time.
- The District does not furnish tools, training, or equipment to the contractor. Contractors should be able to perform their services without the District's facilities (e.g., equipment, office furniture, machinery).
- The contractor's investment in his/her trade must be real, essential, and adequate.
- The contractor has employer identification numbers with the Internal Revenue Service and the California Employment Development Department for reporting employer payroll taxes and employee wages.
- The individual is not presently employed by the District to do the same type of work.
- Contractors are hired to provide a result and usually have the right to hire others to do the actual work.
- Contractors are hired for the final result, and therefore should not be asked for progress or interim reports.
- Contractors are generally responsible for their incidental expenses.

- Contractors should be able to make a profit or a loss. Five circumstances show that a profit or loss is possible:
- If the contractor hires and pays assistants
  - If the contractor has his/her own office, equipment, materials, or facilities
  - If the contractor has continuing and reoccurring liabilities
  - If the contractor has agreed to perform specific jobs for prices agreed upon in advance
  - If the contractor's services affect his/her own business reputation

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.

## **E. 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.

This procedure applies to bond measure and mixed-funding projects managed through the Bond Program. Mixed-funding projects are defined as projects that are at least 50% funded by Proposition A, Proposition AA, and/or Measure J proceeds.

## **F. Professional Services Contracts for Architects and Engineers**

Architect and Engineer services are considered "professional services contracts" which may allow for direct contracting without a competitive procurement process. However, whenever beneficial and feasible it is the practice of the District to procure such services competitively. The procurement of these services follow the guidelines below for services.

### **Architect/Engineer Fee Guidelines for Basic Services - New Construction/Renovation/Additions**

Basic Services Include:

- |  |    |
|--|----|
| ◦ Schematic Design (requires Board Approval) | SD |
| ◦ Design Development                         | DD |
| ◦ Construction Documents                     | CD |
| ◦ Bidding Support                            | BS |
| ◦ Construction Administration                | CA |

The above services to be performed, as applicable, by the following disciplines:

- Civil
- Architectural

- Structural
- Mechanical – HVAC
- Plumbing
- Fire Protection
- Electrical
- Hardware
- Landscaping
- Sustainability Consultant
- FF& E
- Signage and Graphics
- The deliverables consist of:
  - Drawings
  - Specifications
  - Basis of Design Report
  - Cost Estimating Report
  - BIM modeling (where applicable per contract)

For further definition of scope and deliverables refer to Design Consultant Services Agreement.

#### **LACCD PROPOSITION A/AA AND/OR MEASURE J BOND PROGRAM - ARCHITECT/ENGINEER'S BASIC SERVICES FEE GUIDELINES**

<b>NEW CONSTRUCTION</b>	
<b>Basic services</b>	
Fee	
Max Percentage	Construction Cost (Dollars)
8.50%	Under 1 million
8.25%	1 to 2.5 million
8.00%	2.5 to 5 million
7.75%	5 to 7.5 million
7.50%	7.5 to 10 million
7.25%	10 to 15 million
7.00%	15 to 45 million
6.75%	45 to 70 million
6.50%	70 to 100 million
6.25%	Over 100 million
<b>RENOVATION PROJECTS</b>	
<b>Add Percentage to Basic Services Above</b>	
Fee	
Max Percentage	Construction Cost
2.50%	Under 7.5 million
2.25%	7.5 to 60 million
2.00%	Over 60 million

Construction budget is published with any Request for Proposal for a design consultant.

Construction budget is considered 70% of total project budget and does not include furniture, fixtures and equipment. Increase in construction budget through no fault of the

design consultant will be added to the original construction budget and the A/E fee adjusted accordingly.

### **Sub consultants for under Contract with Architect/Engineer**

Sub consultant's services that are additional to the disciplines included above are subject to individual authorization. Fee for these services will be proposed by service provider and negotiated. Architect/Engineer is entitled to a markup of 3% for administration and risk as a contract reimbursable.

Most commonly required sub consultants service areas are:

- Programming
- Security
- Acoustics
- Traffic
- Arborist
- Food Service
- Audio Visual
- Theatre Consultant

#### **1. Purpose and Scope**

- a. In order to provide a safe environment for the education of students in the District, the District requires every consultant which performs professional services for the District's BuildLACCD program to certify that they have not assigned any individual, whether an employee or independent contractor, or sub-consultant of the consultant, to perform services for the District without first certifying that the consultant has conducted a criminal background check and the individual is not ineligible to provide work to the District.
- b. This administrative procedure is not intended to apply to consultants which:
  - i. contract with the District outside the BuildLACCD program;
  - ii. provide design, engineering, testing or general construction services for the BuildLACCD program; or
  - iii. provide goods and materials to the BuildLACCD program.
- b. This administrative procedure shall not apply if the District determines that the consultant is providing services in an emergency or exceptional situation, such as when student health or safety is endangered or when repairs are needed to make facilities safe and habitable.

#### **2. Definitions**

The terms below shall be defined as follows for the purposes of this administrative procedure:

- a. "Consultant" shall mean:
  - i. All contractors and their subcontractors under contract with the District to provide personnel for the execution, management, oversight, reporting or administration of the BuildLACCD program.

- ii. The District is solely responsible for the determination that a contractor is acting in the capacity of a consultant and is required to provide Criminal Background Checks under this administrative procedure.
- b. "Criminal Background Check" shall mean a criminal background check which includes review of both of the following:
  - i. a multi-state and multi-jurisdiction criminal records locator or other similar commercial nationwide database with validation; and
  - ii. a search of the United States Department of Justice National Sex Offender Public Web site.
- c. "Prohibited Conviction" shall mean, a conviction for any of the following:
  - i. A sex offense as defined in Education Code Section 87010.
  - ii. A controlled substance offense as defined in Education Code Section 87011.
  - iii. A violent felony as listed in Penal Code Section 667.5, subdivision(c).
  - iv. A serious felony as listed in Penal Code Section 1192 .7, subdivision (c).
  - v. Any offense committed in another jurisdiction that includes all of the elements of any of the offenses described in sections 2.c.i-iv.

### **3. Criminal Background Check**

- a. A Consultant shall not assign any individual or allow any subcontractor to assign any individual to provide services to the District unless:
  - i. The Consultant has performed or obtained the results of a Criminal Background Check for the individual proposed to be assigned to provide services to the District within three (3) months of certifying compliance with this administrative procedure.
  - ii. The Criminal Background Check did not indicate the individual:
    - 1. has one or more Prohibited Conviction(s); or,
    - 2. is currently registered on the United States Department of Justice National Sex Offender Public Web site; or,
    - 3. has been determined to be a sexual psychopath under the provisions of Article 1 (commencing with Section 5500), Chapter 1, Part 1.5, Division 6 of the Welfare and Institutions Code or under similar provisions of law of any other state.
- b. Notwithstanding section a.ii. above, a Consultant may assign an individual or allow any subcontractor to assign an individual to provide services to the District if any of the following circumstances are present:

- i. the individual received a certificate of rehabilitation and a pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code; or,
  - ii. the individual's conviction(s) was judicially ordered sealed or expunged; or
  - iii. the individual's conviction(s) is reversed and the individual is acquitted of the offense in a new trial or charges against him/ ~~or~~ her are dismissed.
- c. A Consultant must act in strict conformity with all applicable statutes and regulations, including but not limited to the Americans with Disabilities Act, and state and federal anti-discrimination and privacy laws when complying with this administrative procedure.

#### **4. Certification By Consultant**

- a. A Consultant must certify in writing that the Consultant has complied with this administrative procedure.
- b. No employee or independent contractor of a Consultant, or of their respective sub-consultants, may perform work for the District until the District has received the completed certification from the Consultant.
- c. The District shall not receive any direct information regarding the Criminal Background Checks performed by a Consultant or respective sub-consultant, nor should a Consultant or respective sub-consultant provide such information to the District.

Also see BP/AP 6330 Purchasing, BP/AP 6340 Bids and Contracts, AP 6345 Bids and Contracts Under the UPCCAA, AP 6350 Contracts – Construction, AP 6355 Contracts – Job Order Contracts, AP 6360 Contracts – Electronic Systems and Materials, AP 6365 Contracts – Accessibility of Information Technology, and BP/AP 6380 Vendors.

Legal

Education Code Section 88003.1

Government Code Section 53060

Labor Code Section 3353

Public Contract Code Section 10335.5

Cross References

BP/AP 6330 Purchasing

BP/AP 6340 Bids and Contracts

AP 6345 Bids and Contracts Under the UPCCAA

AP 6350 Contracts – Construction

AP 6355 Contracts – Job Order Contracts

AP 6360 Contracts – Electronic Systems and Materials

AP 6365 Contracts – Accessibility of Information Technology

BP/AP 6380 Vendors