Port Orford-Langlois School District 2CJ

Code: DJCA-AR
Adopted: 6/8/04
Orig. Code(s): DJCA-AR

Personal Services Contracts

I. Personal Services Contracts Defined

A. Personal services contracts include, but are not limited to:

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.

B. Personal services contracts do not include:

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, first-aid 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.

II. 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:

State requirements[1]:

A. The contractor must be free from the direction and the control of the employer;

B. The contractor must obtain required business licenses;

C. The contractor must furnish necessary tools and equipment;

D. The contractor has authority to hire and fire employees;

E. The contractor is paid on completion of portions of projects or on a retainer basis;

F. The construction contractor must be registered under ORS Chapter 701 (For more information call the Construction Contractors Board at 503-378-4621 in Salem.);

G. The contractor must file appropriate business tax returns;

H. The contractor must represent to the public that the labor or services are provided by an independent business.

PERS requirements:

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

A. 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;

B. 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;

C. 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;

D. Services rendered personally. An employee renders services personally. This shows that the employer is interested in the methods as well as the results;

E. 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

[1]See ORS 670.600 for complete listing.

under a contract that requires him/her to provide materials and labor and to be responsible only for the result;

F. 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;

G. 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;

H. 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;

I. 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;

J. Order of 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;

K. 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;

L. 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;

M. 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;

N. Furnishing of tools and materials. An employee is normally furnished significant tools, materials and other equipment by an employer;

O. Significant investment. An independent contractor has a significant investment in the facilities he/she uses in performing services for someone else;

P. Realization of profit or loss. An independent contractor can make a profit or suffer a loss;

Q. 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;

R. Making service available to general public. An independent contractor makes his/her services available to the general public;

S. 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;

T. 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.

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:

A. Behavioral control. A worker is an employee when the district has the right to direct and control the worker;

B. 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;

C. 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.

III. Personal Services Contracts - Procurement Requirements

A. Contracts for personal services less than $5,000 within a 12-month period, shall, where practical, be based on written or verbal quotes or may be procured through direct negotiations with the contractor.

B. Contracts for personal services that are for $5,000 or more but do not exceed $75,000 shall be based on three written or verbal quotes, or response to a request for proposal (RFP) as deemed appropriate by the superintendent or designee.

C. Contracts for personal services that exceed $75,000 shall be based on the RFP process.

D. The district may enter into a personal services contract when the amount of the services does not exceed $75,000 without obtaining quotes or utilizing the RFP process when only one contractor or sole source provides the services as follows:

1. The superintendent or designee shall make the following findings for inclusion in the contract file:

   a. A brief description of the service(s) including contemplated future purchases;
   b. The reason the district is seeking this solicitation method, which shall include at least one of the following findings:

(1) It is unlikely that a sole source contract will substantially diminish competition; or
(2) There is only one provider of the quality or qualifications required.

c. Documentation of current market research that supports the findings in (2)(a).

E. If the cost of the services is more than $75,000, the district may award a contract on a sole source basis, only with Board approval and if prior to the award:

1. Notice of the district's intent to contract for the services, including the general specifications of the intended contract, is advertised in at least one newspaper or trade journal of general circulation in the area where the services are to be performed;
2. The advertised notice is published not fewer than five calendar days before close of the solicitation to allow prospective contractors a reasonable opportunity to submit a protest of the district's intent to contract through the sole source process; and
3. The protest shall be submitted in writing to the district by the closing date and time of the advertisement notice. It shall state the reason the contract should be competitively solicited.

Protests shall be heard by the Board, whose decision shall be final.

IV. RFP Requirements

A. The RFP will be used as a formal competitive solicitation that describes the specific services to be performed within a defined period of time. The solicitation will set forth criteria and methods for screening, selecting and ranking the most qualified proposal(s). The RFP may result in contracts with more than one provider.

B. The RFP must provide that the district is not responsible for any cost incurred while submitting proposals and that all proposers who respond do so at their own expense.

C. The RFP must include a complete description of the work to be performed. The RFP must describe any conditions affecting the delivery of the services and the time period in which the services are to be completed.

D. The RFP must, at a minimum, address the following:

1. Minimum standards and qualifications required to be met by the proposer(s) to be eligible to provide the services;
2. The evaluation process and criteria to be used to select the contractor(s), including the weight or points applicable to each criteria. Information must include the manner in which the proposer's cost and pricing proposal will be evaluated;
3. A requirement to provide a list of similar services completed by the proposer(s) with references concerning past performance;
4. The closing date and time of the solicitation and the delivery location(s) for proposals;

5. Reservation of the right to seek clarifications of each proposal, and the right to negotiate a final contract within the scope of work described in the RFP;
6. Reservation of the right to reject any or all proposals, if such rejection would be in the public interest;
7. Reservation of the right to cancel the solicitation if such cancellation would be in the public interest;
8. The possibility of any interviews; and
9. Any other information to be used to evaluate, rank and select the best proposer(s). This should include, but is not limited to: information regarding proposal form and organization, anticipated contract award date, funding information and budget requirements.

E. RFP's must be advertised at least once in a newspaper or trade journal of general circulation and in as many additional issues and publications as may be necessary or desirable to achieve adequate competition.

F. Any advertisement for an RFP shall be published and appear at least once, no fewer than 14 calendar days before the close of the solicitation. The superintendent may declare in writing that a shorter period is deemed necessary in the public interest for a particular procurement. Such notice, however, shall be published no less than five days prior to the close of the solicitation.

G. All advertisements shall describe at minimum:

1. The date and time after which responses will not be received, which shall be not less than five days after the date of the last publication of the advertisement;
2. The nature of the work to be done;
3. The office where the description for the work to be performed may be reviewed;
4. The name and title of the person designated for receipt of the proposal;
5. The date, time and place that the district will publicly open the proposals.

DELETE

V. Screening and Selection Procedures

A. A pre-proposal meeting (voluntary or mandatory) may be held for all prospective contractors to discuss the proposed services, solicitation provisions and contract requirements. The RFP shall include the date, time and place of the meeting(s).

B. Proposals will be evaluated by the superintendent or designee.

C. The superintendent or designee shall review, score and rank all responsive proposals according to the evaluation criteria in the RFP which may include, but not be limited to, the following:

1. Availability and capability to perform the work;
2. Experience of key staff on comparable projects, or in performing comparable services;
3. Demonstrated ability to successfully complete similar projects or perform similar services on time and within budget;
4. References from past clients, public and private;
5. Performance history in meeting deadlines, submitting accurate estimates, producing quality work and meeting financial obligations;
6. Status and quality of any required licensing or certification;
7. Knowledge and understanding of the required services as shown through the proposed approach to staffing and scheduling needs;
8. Fees or costs;
9. Results from oral interviews, if conducted;
10. Availability of any specific required resources or equipment;
11. Geographic proximity to the project or the area where the services will be performed;
12. Identity of proposed subcontractors and their qualifications; and
13. Any other criteria deemed relevant to the provision of services.

D. Final ranking will be based on all information obtained during the evaluation process. Price will be considered, but will not necessarily govern selection of the contractor(s).

E. Contracts entered into may be amended, provided the original contract allows for the particular amendment and the services to be provided under the amendment are included within or directly related to, the scope of the project or the scope of the services described in the solicitation document.

VI. Documentation

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

VII. 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.

VIII. 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.

DELETE