

New Law as of 01/01/03
Regarding Use of Independent Contractors to Perform Services
Currently or Customarily Performed by Classified District Employees

Education Code Section 88003.1 establishes standards for the use of contractors to provide services that are currently or customarily performed by classified District employees.

Education Code Section 88003.1 applies to contracts entered into after January 1, 2003. However, it does not apply to contract renewals when the original contracts had commencement dates prior to January 1, 2003, irrespective of whether such contract renewals are with the original contractor or with a new contractor.

I. Independent Contractors may be used to perform services currently or customarily performed by classified District employees when **one or more of the seven following conditions are met:**

- ☐ **Contract is for New Community College Functions and Applicable Law Mandates or Authorizes Performance of the New Functions by Independent Contractors**
- ☐ **Contract Provides Highly Specialized or Technical Services, Services Unavailable within Community College Districts, or Services that District Employees Cannot Perform Satisfactorily**
- ☐ **Contract is for Services Incidental to a Contract for the Purchase or Lease of Real or Personal Property:** Contracts under this criterion, known as "service agreements," shall include, but not be limited to, agreements to service or maintain office equipment or computers that are leased or rented.
- ☐ **The Policy, Administrative, or Legal Goals and Purposes of the District Cannot Be Accomplished Through the Utilization of Persons Selected Pursuant to the Regular or Ordinary Hiring Process:**
Contracts are permissible under this criterion to protect against a conflict of interest or to ensure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.
- ☐ **Emergency Appointments Not To Exceed 60 days if Certain Criteria are satisfied:** "Emergency appointment" means an appointment not to exceed 60 working days made during an actual emergency or to prevent the stoppage of public business or because of the limited duration of the work. The frequency of appointment, length of employment, and the circumstances appropriate for the appointment of firms or individuals under emergency appointments shall be restricted so as to prevent the use of emergency appointments to circumvent the regular or ordinary hiring process.

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- ☐ **The Contractor will provide Equipment, Materials, Facilities, or Support Services that Could Not Feasibly Be Provided By the District In the Location where the Services are to be performed**
- ☐ **The Services are of such an Urgent, Temporary, Or Occasional Nature that the Delay Incumbent in their Implementation under the District's Regular or Ordinary Hiring Process would Frustrate Their Very Purpose**

II. Unless permissible per part I above, Independent Contractors may be used to perform services currently or customarily performed by classified school employees **only if all the following conditions are met:**

- ☐ **Documented Cost Savings:** The District requestor must clearly demonstrate that the proposed contract will result in actual overall cost savings to the community college district, provided that:

(A) In comparing costs, there shall be included the community college district's additional cost of providing the same service as proposed by a contractor. These additional costs shall include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment, and materials needed to perform the function.

(B) In comparing costs, there shall not be included the community college district's indirect overhead costs unless these costs can be attributed solely to the function in question and would not exist if that function was not performed by the community college district. Indirect overhead costs shall mean the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.

(C) In comparing costs, there shall be included in the cost of a contractor providing a service any continuing community college district costs that would be directly associated with the contracted

function. These continuing community college district costs shall include, but not be limited to, those for inspection, supervision, and monitoring.

- ☐ **Contractor Wage Rates and Benefits do not undercut District Pay Rates and Benefits:** Proposals to contract out work shall not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Proposals to contract out work shall be eligible for

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approval if the contractors wages are at the industry's level and do not undercut community college district pay rates.

- ☐ **Contract will not cause displacement of District Employees:**
The contract must not cause the displacement of community college district employees. The term "displacement" includes layoff, demotion, involuntary transfer to a new classification, involuntary transfer to a new location requiring a change of residence, and time base reductions. Displacement does not include changes in shifts or days off, nor does it include reassignment to other positions within the same classification and general location or employment with the contractor, so long as wages and benefits are comparable to those paid by the school district.
- ☐ **Substantial and Reliable Savings:** The savings shall be large enough to ensure that they will not be eliminated by private sector and community college district cost fluctuations that could normally be expected during the contracting period.
- ☐ **Savings Amount Justifies Size and Duration of Contract**
- ☐ **The Contract Is Awarded Through A Publicized, Competitive Bidding Process.**
- ☐ **The Contract includes specific provisions regarding qualifications of contractor's staff and nondiscrimination in hiring:** The contract must include 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 Community College District From Potential Contractor Rate Increases Is Minimal.**
- ☐ **The Contract Is With A Firm:** A "firm" means a corporation, limited liability corporation, partnership, nonprofit organization, or sole proprietorship.
- ☐ **The Potential Economic Advantage Of Contracting Is Not Outweighed By The Public's Interest In Having A Particular Function Performed Directly By The Community College District.**

(Full text of Education Code Section 88003.1 follows)

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Full Text of Education Code Section 88003.1

88003.1. (a) Notwithstanding any other provision of this chapter, personal services contracting for all services currently or customarily performed by classified school employees to achieve cost savings is permissible, unless otherwise prohibited, when all the following conditions are met:

(1) The governing board or contracting agency clearly demonstrates that the proposed contract will result in actual overall cost savings to the community college district, provided that:

(A) In comparing costs, there shall be included the community college district's additional cost of providing the same service as proposed by a contractor. These additional costs shall include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment, and materials needed to perform the function.

(B) In comparing costs, there shall not be included the community college district's indirect overhead costs unless these costs can be attributed solely to the function in question and would not exist if that function was not performed by the community college district. Indirect overhead costs shall mean the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.

(C) In comparing costs, there shall be included in the cost of a contractor providing a service any continuing community college district costs that would be directly associated with the contracted function. These continuing community college district costs shall include, but not be limited to, those for inspection, supervision, and monitoring.

(2) Proposals to contract out work shall not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Proposals to contract out work shall be eligible for approval if the contractors wages are at the industry's level and do not undercut community college district pay rates.

(3) The contract does not cause the displacement of community college district employees. The term "displacement" includes layoff, demotion, involuntary transfer to a new classification, involuntary transfer to a new location requiring a change of residence, and time base reductions. Displacement does not include changes in shifts or days off, nor does it include reassignment to other positions within the same classification and general location or employment with the contractor, so long as wages and benefits are comparable to those paid by the school district.

(4) The savings shall be large enough to ensure that they will not be eliminated by private sector and community college district cost

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fluctuations that could normally be expected during the contracting period.

(5) The amount of savings clearly justify the size and duration of the contracting agreement.

(6) The contract is awarded through a publicized, competitive bidding process.

(7) 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.

(8) The potential for future economic risk to the community college district from potential contractor rate increases is minimal.

(9) The contract is with a firm. A "firm" means a corporation, limited liability corporation, partnership, nonprofit organization, or sole proprietorship.

(10) The potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by the community college district.

(b) Notwithstanding any other provision of this chapter, personal services contracting shall also be permissible when any of the following conditions can be met:

(1) The contract is for new community college district functions and the Legislature has specifically mandated or authorized the performance of the work by independent contractors.

(2) The services contracted are not available within community college districts, cannot be performed satisfactorily by community college district employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the community college district.

(3) The services are incidental to a contract for the purchase or lease of real or personal property. Contracts under this criterion, known as "service agreements," shall include, but not be limited to, agreements to service or maintain office equipment or computers that are leased or rented.

(4) The policy, administrative, or legal goals and purposes of the community college district cannot be accomplished through the utilization of persons selected pursuant to the regular or ordinary hiring process. Contracts are permissible under this criterion to protect against a conflict of interest or to ensure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.

(5) The nature of the work is such that the criteria for emergency appointments apply. "Emergency appointment" means an appointment made for a period not to exceed 60 working days either during an

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actual emergency to prevent the stoppage of public business or because of the limited duration of the work. The method of selection and the qualification standards for an emergency employee shall be determined by the community college district. The frequency of appointment, length of employment, and the circumstances appropriate for the appointment of firms or individuals under emergency appointments shall be restricted so as to prevent the use of emergency appointments to circumvent the regular or ordinary hiring process.

(6) The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the community college district in the location where the services are to be performed.

(7) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under the community college district's regular or ordinary hiring process would frustrate their very purpose.

(c) This section shall apply to all community colleges, including community college districts that have adopted the merit system.

(d) This section shall apply to personal service contracts entered into after January 1, 2003. This section shall not apply to the renewal of personal services contracts subsequent to January 1, 2003, where the contract was entered into before January 1, 2003, irrespective of whether the contract is renewed or rebid with the existing contractor or with a new contractor.