

CONSULTANTS

The Monterey County Superintendent of Schools (County Superintendent) may retain independent contractors/consultants where there is a requirement to obtain special services and/or advice from persons who are specially trained, experienced, and competent to perform the special services required, and only when employees of the County Superintendent or employees of other public agencies cannot provide the required services at the required time.

It is the intent of the County Superintendent to assure that contracts for consultant services are proper and in the best interest of the Monterey County Office of Education (MCOE). It is important to the operation of the MCOE that all management employees uniformly follow legal guidelines for the determination of a person's status for services provided.

State and federal regulatory agencies make distinction between an employee and an independent contractor. Unlike, employees, independent contractors do not have employment taxes withheld and are not eligible for MCOE benefits. Failure to properly make such distinctions prior to receiving services can result in substantial financial penalties to the organization by the Internal Revenue Service and other governmental agencies.

For guidance purposes, an independent contractor, as defined for federal tax purposes, is an individual having no employment relationship to the MCOE, either by statutory, common-law, or regulatory tests. Therefore, the State of California has no FICA or income tax withholding obligations for the independent contractor. An independent contractor shall be generally referred to as a "non-employee."

An independent contractor possesses specialized knowledge and skills, provides a specific product or service and functions autonomously in determining when and how the work shall be accomplished. MCOE utilizes independent contractors for services, skills or capabilities, which are not available from within the organization. This means that the organization, in effect, is purchasing expertise, which it does not have. The independent contractor receives payment from MCOE, documented by issuance of an IRS Form 1099 and meets the following conditions:

1. Offers similar services to the general public on a consistent basis
2. Provides services through a written contract (i.e. the MCOE Independent Contractor Agreement)
3. Renders a service to MCOE for a specified amount of compensation for a specified result

4. Performs Services for which MCOE does not control the methods used to obtain the results.

Management employees requesting authorization (Independent Contractor Request Form) to contract for consulting services shall determine the nature of the employment relationship. The Independent Contractor Request Form is to be forwarded to the Business Office for review and approval. This determination shall be made prior to any services being performed and/or the issuance of any payment. The document *Rules and Procedures for Classifying and Paying Independent Contractors* shall be used in making the determination. The management employee, the Division Head, and the Business Office are jointly responsible to assure that the independent contractor/consultant is properly classified, and if there is any doubt, contact should be made with the Director of Payroll & Purchasing.

If the proposed consultant does not meet the criteria for independent contractor status, he/she may be hired as a short-term employee. The management employee shall contact the Human Resources Department for initiation of the appropriate paperwork for the hiring process.

Once the legal employment relationship has been established, the document *Rules and Procedures for Classifying and Paying Independent Contractors* shall be used to collect required information regarding the contractor and service, specify requirements necessary for processing, and the properly contract the person for service to MCOE. Procedures require the disclosure of any substantial interest by an employee in any contract, sale, purchase, or service by or to the MCOE as well as disclosure of any substantial interest in any decision of the MCOE.

Expenditures of funds for the hiring of consultants shall not exceed the funds budgeted by major object category (5000s) for such purposes in the annual budget or revisions of the annual budget of MCOE.

If the consultant contract is (1) initially established for \$25,000 or more or (2) it is anticipated that the final cost of the contract will be \$25,000 or more, **and** the contract **exceeds the current budgetary appropriation in the major object category (5000s)** and requires a budget revision, the cost shall be incorporated in the next interim financial report or other report to the Monterey County Board of Education (County Board) for discussion and approval at a regularly scheduled meeting of the Board (BP 3600).

The contract cannot be processed until the County Board approves the budgetary appropriation. The department engaging the consultant is required to inform the Business Services Department and will assist in the development of the action Board Agenda item.