

Billings School District 2

FINANCIAL MANAGEMENT

Guideline for Independent Contractor Agreement

This guide is developed for your use to assure compliance with tax laws regarding the definition of the term “consultant.” It will also outline the method for preparation of a consultant contract and accompanying purchase order.

Each year the District enters into a large number of contracts with consultants. Please review these guidelines whenever determining consultant status (see Employee vs. Independent Contractor). There are significant implications for the District regarding Internal Revenue Service tax obligations. A significant dollar penalty can be assessed against the District if the IRS determines a person hired by the District as a consultant should NOT be classified as a consultant according to established guidelines. For all employees (not consultants), the District is required to withhold the employees’ share of federal and state taxes as well as fringe benefits such as FICA, Workman’s Compensation, etc.

When a contract is entered into, a monetary liability is incurred but never encumbered; therefore, budget reports are not up to date. In order to have more up to date financial reports for the building/department administrator, the handling of consultant contracts has changed.

Procedures

An Independent Contractor Agreement must be prepared for consultant services. The Administrator will send the prepared Agreement along with a W-9 form to the consultant to sign and return. The Administrator will sign and code the agreement and submit it to the Business Manager for approval. Once approved, it will be returned to the initiating Administrator to encumber by purchase order. When services are completed the vendor will submit an invoice to the Administrator. The invoice will be approved for payment by the Administrator and sent to Accounts Payable along with a copy of the contract for payment. Partial payments can be authorized by submitting a copy of the order with partial payment notation. This is the same procedure used for ordering other services or merchandise.

Attached are copies of the Independent Contractor Agreement and Invoice for Payment.

The following descriptions and guidelines are applicable for the use of consultants as well as copies of the “Consultant Contract” and “Invoice for Payment” forms.

Employee vs. Independent Contractor

In reviewing any school district budget, you will note that the largest expense items are salaries and the related payroll taxes. Because salaries and related taxes have a significant impact on school districts, it is important to determine whether individuals receiving payment for services

are employees or independent contractors. Improper determination could result in the district incurring additional expense.

A wage or salary payment to an employee requires the school district to incur the following expenses:

- FICA (Social Security)
- Workmen's Compensation
- Possibly, contributions to a retirement plan
- Possibly, state unemployment benefits
- Federal income tax – employees share
- State income tax – employees share

Failure on the part of the district to withhold the above taxes can result in a significant dollar penalty being assessed to the district.

Payments to independent contractors do not require any of the above taxes or withholdings. Since the independent contractors are viewed as self-employed individuals, they are responsible for paying their own social security tax (at higher rates than an employee) and federal and state income taxes. A COMPLETED W-9 MUST ACCOMPANY THE CONSULTANT CONTRACT.

Since an employee is not specifically defined, the following factors are used to determine the individual's status. A person is an employee if the employer has the right to direct and control that individual in the way he or she works both as to the final results and as to the details of when, where, and how the work is done. Although no one factor has more weight than the others, the majority of the factors need to be evaluated.

The following table will help to identify whether or not a person should be hired as an employee or as a consultant:

<u>Criteria</u>	<u>Employee</u>	<u>Independent Contractor</u>
1. Is the employee required to comply with instructions about who, where, and how to work?	Yes	No
2. Is the individual trained by the employer to perform services in a particular manner?	Yes	No
3. Is the individual's services integrated into the business and does the continuity of the business depend to an appreciable degree upon the performance of these services?	Yes	No
4. Are the services rendered personally by the		

individual without the ability to hire substitutes?	Yes	No
5. Does the individual lack the authority to hire, supervise, and pay assistance without employer's approval?	Yes	No
6. Is there a strong continuing relationship between the individual and the "employer"?	Yes	No
7. Has the "employer" established a set hours of work schedule for the individual?	Yes	No
8. Is the individual required to denote his full time to the business of the employer?	Yes	No
9. Is the individual doing work on the employer's premises?	Yes	No
10. Must the individual perform the services in an order of sequence set by the employer?	Yes	No
11. Is the individual required to render oral, or written reports?	Yes	No
12. Is the individual paid by the employer at regularly stated intervals, such as the hour, week, or month?	Yes	No
13. Does the employer pay the individual's travel expenses?	Yes	No
14. Does the employer furnish the tools and materials used by the individual?	Yes	No
15. Does the individual lack a significant investment in facilities or equipment?	Yes	No
16. Does the individual work for only one firm at a time?	Yes	No
17. Does the individual fail to make his/her services available to the general public?	Yes	No
18. Does the employer have the right to discharge the individual prematurely?	Yes	No

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| 19. Does the employer have the right to terminate at any time without incurring liability? | Yes | No |
| 20. Does the employer realize an economic profit or loss as a result of the individual services? | Yes | No |

The above list is not all inclusive nor does it apply to every situation. This list above may be used as a general guide rather than a hard and fast rule.

Coding for Payment

All contracts for consultant services shall be coded to a 300 object series number. The Office of Public Instruction has defined Purchased Professional and Technical Services to be the following:

“Services which by their nature can be performed only by persons or firms which specialized skills and knowledge. Included are the services of architects, engineers, auditors, dentists, medical doctors, lawyers, consultants, accountants, etc.”

310 - Official/Administrative Services

Services in support of the various policy-making and managerial activities of the school district. Included would be management consulting activities oriented to general governance or business and financial management of the school district; school management support activities; election and tax assessing and collection services.

320 - Professional/Educational Services

Services in support of the instructional program and its administration. Included would be curriculum improvement services, counseling and guidance services, library and media support and contracted instructional services such as correspondence courses. Library and media support includes film rentals, user fees and telephone charges for electronic databases and satellite feeds.

321 - Distance Learning Professional-Educational Services

Contracted services in support of the distance learning programs.

330 - Other Professional Services

Professional services other than educational in support of the operations of the school district. Included are medical doctors, lawyers, architects, auditors, accountants, therapists, audiologists, dieticians, editors, negotiations specialists, system analysts, planners, music accompanist, DJ's for dances, drug testing, security at school activities, etc.

340 - Technical Services

Services to the school district which are not regarded as professional but require basis scientific knowledge and/or manual skills. Included are referees for athletic events, judges for musical or speech activities, data processing services, purchasing and warehousing services, graphic arts,

etc.

351 - Contracted Services with Other School Districts Within the State

Includes contracts for specific services such as graphic arts, data processing, purchasing, and warehousing from other school districts rather than private contractors.

354 - Contracted Services with Cooperatives

Includes contract for services such as audiologists and speech or physical therapy from cooperatives rather than private contractors to school districts.

Implementing Policy 7320 Purchasing

Cross References: Policy 6430 Development of Administrative Procedures
 7320-P4 Request for Proposal
 7320-P5 Billings Public Schools Bid
 7320-P6 Sole Source Purchasing

Legal References:

Procedure History:

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