



ADMINISTRATIVE MEMORANDUM
COUNTY OF SAN MATEO

NUMBER: C-4

SUBJECT: Independent Contractors

RESPONSIBLE DEPARTMENT: County Attorney's Office

APPROVED: _____

DATE: _____

3/30/23

PURPOSE

The purpose of this Administrative Memorandum is to set forth certain policies and procedures regarding the retention of independent contractors to perform services for the County. It does not supersede or replace other legal or County specific requirements for the retention of contracted services, such as Administrative Memorandum B-1. This memorandum replaces Administrative Memorandum C-4, dated February 1, 1984.

These guidelines should be used prior to contracting for any services for the County. Any questions or requests for exceptions to these guidelines should be directed to your assigned County Executive Analyst and/or County Attorney.

BACKGROUND

Departments must determine whether service providers retained pursuant to contract are properly utilized as independent contractors or if applicable law requires that they be considered employees or joint employees of the County. Misclassifying service providers as independent contractors could create legal and financial risk to the County. Departments should consult with County Attorneys for advice in making this determination.

POLICY

Contracts for services from independent contractors, when properly issued and administered, are an approved method to accomplish County program objectives. Generally, it may be appropriate to retain services pursuant to a contract when the provider possesses specialized skills or resources, meets an unusual or temporary operational requirement, or addresses emergency situations. Such contracts must clearly state that the service provider (and its employees) are not employees of the County.

Prior to contracting for services, Department Heads must determine that:

1. There is a public interest and need for the services to be performed;
2. County employees are unable to perform the required work as needed; and
3. Services can be provided in an economic and efficient manner by an independent contractor.

Departments must also determine if the work is customarily performed or within the scope of work done by employees who are members of one of the County's collective bargaining units. If so, Departments must work with the Human Resources Department and the County Attorney's Office to determine what, if any, notice is required to representatives of the affected collective bargaining units and the timing of such notice. Departments are prohibited from contracting for services if such an arrangement would circumvent the processes established by the County's classified service, conflict with any applicable collective bargaining agreements; or bypass the process for adopting and amending the annual budget.

Unless an exception or exemption applies, Departments are also required to engage in competitive procurement and to comply with all other procurement and contract administration processes, including those described in Administrative Memorandum B-1.

Independent contractors who provide services to the County may be required to satisfy some or all of the following criteria. This is a highly fact-specific analysis. Departments should contact the County Attorney's Office for guidance in determining whether the legal criteria are satisfied, or if legal exceptions or balancing tests may apply.

The criteria to consider include whether the service provider:

- Is free from the County's control and direction in connection with the performance of the work.
- Provides services under the contract directly to the County, not to clients of the County.
- Has a written contract specifying the payment amount and due date, the limited term of the service contract, and methods of terminating the contract.
- Has any required license or registration to perform the service, if applicable.
- Maintains a business location separate from the County worksite.
- Is customarily engaged in an independently established business of the same nature as that involved in the work performed.
- Is able to contract with other non-County businesses or entities to provide the same or similar services without restrictions from the County.

- Advertises and holds themselves out to the public as available to provide the same or similar services.
- Provides their own tools, vehicles, and equipment to perform the service, not including any proprietary materials that may be necessary to perform the services under the contract.
- Is able to negotiate their own rates.
- Sets their own hours and location of work, consistent with the nature of the services.
- Does not perform the type of work for which a license from the Contractors' State License Board is required.
- Is compensated on a per job or task basis.
- Provides the service for a limited period of time, as stated in the written contract.
- Has an opportunity for profit or loss based on the provider's managerial skill in performing the contract.
- Provides a service that is not a regular or integral part of the services normally performed by the County.
- Provides a service that requires a special skill.