

VENTURA COUNTY OFFICE OF EDUCATION

SUPERINTENDENT POLICY NO. 3312.2

ADOPTED: 02/14/96

CLASSIFICATION: General Administrative Policies

REVISED: 05/05/08

SUBJECT: Independent Contracts and Consultant Services

Requirements of Independent Contracts

All contracts between the Ventura County Office of Education and outside agencies shall conform to standards required by law and shall be prepared under the direction of the Associate Superintendent, Administrative Services or designee.

All contracts, where appropriate, shall be submitted to the legal advisor of the Ventura County Office of Education for review as to form.

The Ventura County Office of Education shall not enter into any contract with a person, agency, or organization if it has knowledge that such person, agency, or organization discriminates on the basis of race, color, creed, sex, religion, ancestry, national origin, age or non-job related handicap or disability, either in employment practices or in the provision of benefits or services to students or employees.

It shall be expressly understood and agreed that the Contractor, while engaged in carrying out and complying with any of the terms and conditions of a contract will be an independent contractor and not an officer, agent or employee of the Ventura County Office of Education. Contractor will agree to obey all local, state and federal laws in the performance of the contract. Contractor will confirm understanding and agreement that he or she will be an independent contractor and not entitled to coverage under the California Workers' Compensation Insurance laws, Unemployment Insurance or any other benefit normally conveyed to VCOE employees.

Subcontracting

None of the services covered by an Independent Contract shall be subcontracted without the prior written consent of the Superintendent or designee. The Contractor shall be as fully responsible to the Superintendent for the acts and omissions of his/her subcontractors, and of persons either directly or indirectly employed by him/her, as if the acts and omissions were performed by him/her directly.

Indemnification

Contractor will agree, at its own expense, cost and risk, to indemnify, defend, save and hold harmless the Ventura County Office of Education (entity), County Board of Education, their agents, employees and officers against any and all personal injuries, damages, liabilities, costs, suits or expenses, including reasonable attorneys fees, arising out of the performance of the work described in the Contract, caused in whole or in part by any negligent act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of the entity.

Insurance

Contractor will provide and maintain during the term of the contract a program of insurance satisfactory to the Ventura County Office of Education covering its operations hereunder. All insurance shall be with an insurance company with a rating of A or better, as rated by the current edition of Best's Key Rating Guide, published by A.M. Best Company, Oldwick, New Jersey 08858 or other acceptable rating agency and authorized to conduct business in the State of California. Certificates of insurance, along with significant endorsements, shall be delivered to the Ventura County Office of Education on or before the effective date of the Agreement, and shall stipulate that the Ventura County Office of Education is to be given written notice by registered mail at least thirty (30) days in advance of any modification or cancellation of any policy of insurance. Coverage shall include the following:

1. General Liability:

Required insurance coverage shall include, but not be limited to, comprehensive general liability, (where applicable) comprehensive auto liability, and professional or incidental malpractice liability and products liability, with a combined single limit of no less than \$1,000,000 per occurrence. Such insurance shall be primary in all instances and shall name the Ventura County Office of Education as an additional insured.

2. Workers' Compensation:

Contractor's employees shall be covered by Workers' Compensation insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California or equivalent medical and accident insurance coverage as required by applicable State and/or Federal law.

3. Property Coverage:

If, under the terms of the contract, Contractor shall have possession of, rent, lease or be loaned any Ventura County Office of Education-owned real or personal property, Contractor shall insure such property as follows:

a. Real Property

Insurance covering the full insurable replacement value against the hazards of fire, extended coverage and other property-related losses.

b. Personal Property

Insurance for the actual cash value against the hazards of fire, burglary and theft.

Such insurance shall be primary in all instances and shall name the Ventura County Office of Education as loss payee.

4. Failure to Procure insurance: In case of failure on the part of the Contractor to procure or maintain required insurance, the Ventura County Office of Education may, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith; and all monies so paid by the Ventura County Office of Education shall be repaid by the Contractor to the Ventura County Office of Education upon demand or the Ventura County Office of Education may offset the cost of the premiums against any monies due from the Ventura County Office of Education. In certain special circumstances, the Ventura County Office of Education may waive the insurance requirement.

Copyright

With limited exception, Contractor agrees that Superintendent shall be the sole owner of the copyright for any publications, writings, materials or product developed by or as a result of an Independent Contractor Agreement. Contractor shall maintain the confidentiality of any such materials produced.

Arbitration

Any dispute arising out of the performance of an Independent Contractor Agreement shall be resolved by binding arbitration in accordance with rules and procedures of the American Arbitration Association.

Termination

In the absence of express timelines, an Independent Contract may be terminated at any time by either party. In the event of cancellation prior to completion of the specified services, all finished or unfinished documents, data, studies and reports prepared by the Contractor under the agreement shall, at the option of the Superintendent, become Superintendent's property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such items.

Independent Contractor/Outside Consultant Services

The law provides for the use of outside consultants when it is clear they can provide valuable and necessary specialized services not normally required on a continuing basis and which cannot be provided by other personnel because of limitations of time, experience or knowledge.

Funds for outside consultants should be provided for in planning specific projects or programs and will be charged to that particular budget category.

Contracts for outside consultants shall be approved prior to the date services are to be rendered.

Definition

An outside consultant is an independent contractor. Furthermore, for the purposes of this policy, "outside consultant" shall mean a sole proprietor. It is not the intent of this policy to regulate contracts with companies or other firms which provide a product or services of the type normally obtained through a bidding or request for proposal process. Government agencies such as I.R.S., Social Security and unemployment offices, as well as P.E.R.S. and S.T.R.S., generally follow the common law rules in determining whether a worker is employed as an independent contractor or an employee. Under the rules, a worker is an employee if the person for whom he works has the right to direct and control him/her in the way he/she works, both as to the final results and as to the details of when, where and how the work is to be done. The employer need not actually exercise the control; it is sufficient that he has the right to do so. Where the employer does not possess the right, the individual involved is an independent contractor, not an employee. In most cases, if an employer may establish the final result, but may not direct when, where and how the work is to be done, the worker is still an independent contractor.

An independent contractor provides services in an area in which the contractor is skilled. The product or the results to be attained may be quite detailed and may be specified by the Ventura County Office of Education, but method(s) of obtaining the results or producing the product are the contractor's choice. Cases of disagreement or unsatisfactory results would be handled as contract violations and ultimately might result in the Ventura County Office of Education refusing to pay or otherwise voiding the contract.

An independent contractor works under a contract signed by both parties. Payments are based on invoice(s) submitted by the contractor and paid according to fiscal procedures. The Ventura County Office of Education does not take deductions for income tax, social security or other normal payroll deductions. Money paid to the contractor is reported to the I.R.S. by the Ventura County Office of Education on Form 1099, if required by IRS regulations.

Procedures for Employing Outside Consultants

Consultants are employed only after it has been determined by the branch Associate Superintendent or designee that no one in the Ventura County Office of Education has the necessary skills to complete the task. If it is determined that there is sufficient expertise within the Ventura County Office of Education, the employee(s) assigned the task may have their workload prioritized to complete the new assignment. Employees requesting consultant services, with their branch head's approval, should forward a completed Agreement - Contractor/Independent Contractor Services form or a Conference Speaker/Workshop Leader Form outlining the type of services to be provided. The Conference Speaker/Workshop Leader form should only be used if the contractor is providing services for a one time conference or workshop activity. When services will be required on a recurring, periodic or on-going basis, the Independent Contractor form shall be utilized. The amount of the contract shall be the actual (if known) or estimated amount required for the remainder of the current fiscal year. Periodic payments shall be authorized as specified in the contract, upon receipt of an invoice from the contractor and approval of an authorized representative of the requesting department. The contract amount is the maximum amount payable without a properly authorized and executed contract revision.

W-9

A completed W-9 form is required before an Independent Contract or Outside Consultant can be paid. The W-9 must identify the consultant's Taxpayer I.D. Number, and/or Social Security number. The name on the contract and the name on the Taxpayer I.D. or Social Security account must be identical.

Encumbrance of Funds

Funds will be encumbered upon receipt of the Agreement-Contractor/Independent Contractor Services form or a signed copy of the Conference Speaker/Workshop Leader Form.