

§1816-A. Personal services contracting

1. Conditions; general. Except for contracts requiring specific legislative approval, personal services contracting is permissible when any one of the following conditions is met.

A. The services contracted are not currently available within a state agency, can not be performed satisfactorily by civil service employees or are of such a highly specialized or technical nature that the necessary expert knowledge, experience or ability is not available through the civil service system. [PL 1997, c. 285, §1 (NEW).]

B. 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, include, but are not limited to, agreements to service or maintain office equipment or computers that are leased or rented. [PL 1997, c. 285, §1 (NEW).]

C. The legislative, administrative or legal goals and purposes can not be accomplished by using persons selected pursuant to the civil service system. Contracts are permissible under this criterion to protect against a conflict of interest or to ensure independent and unbiased findings when there is a clear need for a different outside perspective. [PL 1997, c. 285, §1 (NEW).]

D. A state agency needs private counsel because a conflict of interest on the part of the Department of the Attorney General prevents it from representing the agency without compromising the agency's position. A contract entered into under this condition requires the written consent of the Attorney General. [PL 1997, c. 285, §1 (NEW).]

E. The contractor provides equipment, materials, facilities or support services that the State can not feasibly provide in the location where the services are to be performed. [PL 1997, c. 285, §1 (NEW).]

F. The contractor conducts training courses for which appropriately qualified civil service instructors are not and can not be made available. [PL 1997, c. 285, §1 (NEW).]

G. The services are of such an urgent, temporary or occasional nature that the delay incumbent in implementation under civil service would frustrate the purpose. [PL 1997, c. 285, §1 (NEW).]

H. The contracting agency demonstrates a quantifiable improvement in services that can not be reasonably duplicated within existing resources. [PL 1997, c. 285, §1 (NEW).]

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2. Conditions; cost savings. Personal services contracting is permissible to achieve actual cost savings when all the following conditions are met.

A. The contracting agency clearly demonstrates that the proposed contract would result in actual overall cost savings to the State as long as, in comparing costs:

(1) The State's costs of providing the same service as proposed by a contractor are included. These costs must 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 service; and

(2) Any continuing state costs directly associated with a contractor providing a contracted function are included. These continuing state costs include, but are not limited to, those costs for inspection, supervision, monitoring and any pro rata share of existing costs or expenses, including administrative salaries and benefits, rent, equipment costs, utilities and materials. [PL 1997, c. 285, §1 (NEW).]

B. The contract does not adversely affect the State's affirmative action efforts. [PL 1997, c. 285, §1 (NEW).]

C. The contract is awarded in accordance with section 1825-B. [PL 1997, c. 285, §1 (NEW).]

D. The contract includes specific provisions pertaining to the qualifications of the staff that is to perform the work under the contract, as well as a statement that the contractor's hiring practices meet applicable affirmative action and antidiscrimination standards. [PL 1997, c. 285, §1 (NEW).]

E. The potential for future economic risk to the State from potential rate increases or work interruptions by the contractor is minimal. [PL 1997, c. 285, §1 (NEW).]

F. The contract is with a firm or a licensed, registered or otherwise professionally qualified individual. For the purposes of this section, "firm" means a corporation, partnership, nonprofit organization or sole proprietorship. [PL 1997, c. 285, §1 (NEW).]

G. The potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by State Government. [PL 1997, c. 285, §1 (NEW).]

H. The contract does not contain standards of performance or employee qualifications lower than existing state standards or minimum qualifications. [PL 1997, c. 285, §1 (NEW).]

I. An equivalent basis for cost comparison between state employee and private contractor provision of services is calculated, as established by rules adopted by the Chief Procurement Officer pursuant to section 1825-B, subsection 11, and it is determined that the private contractor provides the best value. [PL 2023, c. 516, Pt. B, §12 (AMD).]

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3. Contract information retained. Departments or agencies submitting proposed contracts shall retain all data, including written findings, relevant to the contracts and necessary for a specific application of the standards set forth in subsections 1 and 2. [PL 1997, c. 285, §1 (NEW).]

4. Access to public records. As a condition of accepting a contract for services under this section, a contractor must agree to treat all records, other than proprietary information, relating to personal services work performed under the contract as public records under the freedom of access laws to the same extent as if the work were performed directly by the department or agency. For the purposes of this subsection, "proprietary information" means information that is a trade secret or commercial or financial information, the disclosure of which would impair the competitive position of the contractor and would make available information not otherwise publicly available. Information relating to wages and benefits of the employees performing the personal services work under the contract and information concerning employee and contract oversight and accountability procedures and systems are not proprietary information. This subsection applies to contracts, contract extensions and contract amendments executed on or after October 1, 2009. [PL 2009, c. 221, §1 (NEW).]

SECTION HISTORY

PL 1997, c. 285, §1 (NEW). PL 2003, c. 501, §1 (AMD). PL 2003, c. 501, §3 (AFF). PL 2009, c. 221, §1 (AMD). PL 2023, c. 516, Pt. B, §12 (AMD).

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