

DELEGATION OF AUTHORITY TO OBLIGATE THE COMMUNITY COLLEGE DISTRICT

EDUCATION CODE SECTION 81655 & 81656

81655. Wherever in this code the power to contract is invested in the governing board of the community college district or any member thereof, such power may by a majority vote of the board be delegated to its district superintendent, or to such persons as he may designate, or if there be no district superintendent then to such other officer or employee of the district as the board may designate. Such delegation of power may be limited as to time, money or subject matter or may be a blanket authorization in advance of its exercise, all as the governing board may direct; provided, however, that no contract made pursuant to such delegation and authorization shall be valid or constitute an enforceable obligation against the district unless and until the same shall have been approved or ratified by the governing board, said approval or ratification to be evidenced by a motion of said board duly passed and adopted. In the event of malfeasance in office, the district official invested by the governing board with such power of contract shall be personally liable to the district employing him for any and all moneys of the district paid out as a result of such malfeasance.

81656. The governing board by majority vote may adopt a rule, delegating to any officer or employee of the district as the board may designate, the authority to purchase supplies, materials, apparatus, equipment, and services. No such rule shall authorize any officer or employee to make any purchases involving an expenditure by the district in excess of the amount specified by Section 20651 of the Public Contract Code. The rule shall prescribe the limits of the delegation as to time, money, and subject matter. All transactions entered into by the officer or employee shall be reviewed by the governing board every 60 days.

In the event of malfeasance in office, the community college district officer or employee invested by the governing board with the power to contract shall be personally liable for any and all moneys of the district paid out as a result of the malfeasance.

Education Code Section

88003.1. (a) Notwithstanding any other provision of this chapter, personal services contracting for all services currently or customarily performed by classified school employees to achieve cost savings is permissible, unless otherwise prohibited, when all the following conditions are met:

(1) The governing board or contracting agency clearly demonstrates that the proposed contract will result in actual overall cost savings to the community college district, provided that:

(A) In comparing costs, there shall be included the community college district's additional cost of providing the same service as proposed by a contractor. These additional costs shall 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 function.

(B) In comparing costs, there shall not be included the community college district's indirect overhead costs unless these costs can be attributed solely to the function in question and would not exist if that function was not performed by the community college district. Indirect overhead costs shall mean the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.

(C) In comparing costs, there shall be included in the cost of a contractor providing a service any continuing community college district costs that would be directly associated with the contracted function. These continuing community college district costs shall include, but not be limited to, those for inspection, supervision, and monitoring.

(2) Proposals to contract out work shall not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Proposals to contract out work shall be eligible for approval if the contractors wages are at the industry's level and do not undercut community college district pay rates.

(3) The contract does not cause the displacement of community college district employees. The term "displacement" includes layoff, demotion, involuntary transfer to a new classification, involuntary transfer to a new location requiring a change of residence, and time base reductions. Displacement does not include changes in shifts or days off, nor does it include reassignment to other positions within the same classification and general location or employment with the contractor, so long as wages and benefits are comparable to those paid by the school district.

(4) The savings shall be large enough to ensure that they will not be eliminated by private sector and community college district cost fluctuations that could normally be expected during the contracting period.

(5) The amount of savings clearly justify the size and duration of the contracting agreement.

(6) The contract is awarded through a publicized, competitive bidding process.

(7) The contract includes specific provisions pertaining to the qualifications of the staff that will perform the work under the contract, as well as assurance that the contractor's hiring practices meet applicable nondiscrimination standards.

(8) The potential for future economic risk to the community college district from potential contractor rate increases is minimal.

(9) The contract is with a firm. A "firm" means a corporation, limited liability corporation, partnership, nonprofit organization, or sole proprietorship.

(10) The potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by the community college district.

(b) Notwithstanding any other provision of this chapter, personal services contracting shall also be permissible when any of the following conditions can be met:

(1) The contract is for new community college district functions and the Legislature has specifically mandated or authorized the performance of the work by independent contractors.

(2) The services contracted are not available within community college districts, cannot be performed satisfactorily by community college district employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the community college district.

(3) 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," shall include, but not be limited to, agreements to service or maintain office equipment or computers that are leased or rented.

(4) The policy, administrative, or legal goals and purposes of the community college district cannot be accomplished through the utilization of persons selected pursuant to the regular or ordinary hiring process. Contracts are permissible under this criterion to protect against a conflict of interest or to ensure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.

(5) The nature of the work is such that the criteria for emergency appointments apply. "Emergency appointment" means an appointment made for a period not to exceed 60 working days either during an actual emergency to prevent the stoppage of public business or because of the limited duration of the work. The method of selection and the qualification standards for an emergency employee shall be determined by the community college district. The frequency of appointment, length of employment, and the circumstances appropriate for the appointment of firms or individuals under emergency appointments shall be restricted so as to prevent the use of emergency appointments to circumvent the regular or ordinary hiring process.

(6) The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the community college district in the location where the services are to be performed.

(7) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under the community college district's regular or ordinary hiring process would frustrate their very purpose.

(c) This section shall apply to all community colleges, including community college districts that have adopted the merit system.

(d) This section shall apply to personal service contracts entered into after January 1, 2003. This section shall not apply to the renewal of personal services contracts subsequent to January 1, 2003, where the contract was entered into before January 1, 2003,

irrespective of whether the contract is renewed or rebid with the existing contractor or with a new contractor.

Government Code Section

53060. The legislative body of any public or municipal corporation or district may contract with and employ any persons for the furnishing to the corporation or district special services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained and experienced and competent to perform the special services required.

The authority herein given to contract shall include the right of the legislative body of the corporation or district to contract for the issuance and preparation of payroll checks.

The legislative body of the corporation or district may pay from any available funds such compensation to such persons as it deems proper for the services rendered.

Public Contract Code Section

20654. (a) In an emergency when any repairs, alterations, work, or improvement is necessary to any facility of the college, or to permit the continuance of existing college classes, or to avoid danger to life or property, the board may by unanimous vote, with the approval of the county superintendent of schools, do either of the following:

(1) Make a contract in writing or otherwise on behalf of the district for the performance of labor and furnishing of materials or supplies for the purpose without advertising for or inviting bids.

(2) Notwithstanding Section 20655, authorize the use of day labor or force account for the purpose.

(b) Nothing in this section shall eliminate the need for any bonds or security otherwise required by law.