



State of Ohio Administrative Policy

Guidelines for Contracted Resources

No:
State Human Resources Division
HR-50

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Issued By:

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1.0 Purpose

To establish uniform guidelines for state agencies, boards and commissions (“agencies”) under the authority of the Governor that are currently contracting or considering contracting for specific service needs that cannot be filled with state employees.

A glossary of terms found in this policy is located in Appendix A - Definitions. The first occurrence of a defined term is in ***bold italics***. To go directly to a term’s definition, click on the bold and italicized term. To return to the body of the policy, click on the defined term.

2.0 Policy

Generally, agencies should use ***state employees*** to perform agency core functions. Section 124.14(A) of the Revised Code requires the Director of Administrative Services to establish a job classification plan that includes all jobs performed by state employees. Except as provided below, job responsibilities that are covered by the state’s job classification plan should be performed by state employees. Agencies with service needs that cannot be filled with state employees—as determined by the procedure established below—may use a ***contracted resource*** for performance of those services.

2.1 **Agency Responsibility – Prior to Engaging with a Contracted Resource:**

Agencies should consider establishing an internal procedure requiring the person, division, office, etc. (“Requester”) that is requesting a contracted resource to prepare a rationale for the services needed. The rationale could include the assessment described below in Section 2.1.1 and justify the agency’s need for a contracted resource, instead of a state employee, to fill the agency’s service need. Agencies should consider consultation with the agency’s human resources office, legal counsel, finance office, agency procurement officer, and other agency

personnel as necessary (e.g. Chief Information Officer if the contracted resource requested is an IT professional) when deciding whether to engage with a contracted resource.

2.1.1 **Assessment of Agency Service Needs:** A multi-step analysis, outlined below, is needed to specifically identify the needs of the agency and to determine whether the service need should be filled by a state employee or a contracted resource.

2.1.1.1 Define the Service Need. This definition includes a detailed description of the services to be provided to or on behalf of the agency, including any deliverables. As part of this element, the following items should be addressed:

- The duties to be performed including specialized tasks and/or deliverables, and the level of independent judgment (e.g. outside hearing officers as required by the Revised Code or third-party neutrals) required to perform the necessary services;
- The qualifications necessary to fill the need, and any required education, training, skills, knowledge, experience, licensure, or certifications; and
- Details on the duration of the service need. This may include whether the service involves a temporary task, a service provided through a non-permanent funding source (e.g. capital appropriation or grant funding), and/or is related to a specific **project**. This may also include temporary services being provided while an agency seeks to fill a permanent position with a state employee.

2.1.1.2 Evaluate the Service Need for Inherently Governmental Functions. If the service needs and corresponding duties involve matters that are so intimately related to the public interest and inherently governmental, the work is more appropriately suited for a state employee. Examples of such work may include, but are not limited to:

- Establishing policy.
- Influencing or enacting legislation on behalf of the agency.
- Preparing budget requests.
- Managing/supervising state employees.
- Approving position descriptions or performance standards of state employees.
- Awarding or terminating state contracts.
- Obligating the state or agency to payment, providing authority to purchase or authorize purchase orders, the authority to sign contracts, accept deliverables, approve payment for time or expenses, or engaging in any related or similar function.
- Other fiduciary or managerial functions.

2.1.1.3 Compare the Service Need to State Employee Job Responsibilities. There should be a comparison of the duties necessary to fill the

service need to relevant job responsibilities as listed in the state's job classification plan. The agency should use state employees to perform the work where:

- The qualifications, experience, required training, skill, knowledge, licensure, and/or certifications being sought is otherwise available from state employees within the agency or another agency;
- The work is within the scope of a new or established program or service provided by a state agency in its normal operations; and
- The work does not have specified time parameters that establish a date or timeframe of commencement and date of completion.

In certain, limited situations, a contracted resource may be used to fulfill a service need that has not been able to be filled by a state employee. In those instances, agencies should still attempt to fill the need with a state employee before considering a contracted resource, however the necessity may result in the use of a contracted resource. To reduce the reliance on contracted resources in the future, agencies should also consider methods for knowledge transfer from the contracted resource to state employees.

2.1.1.4 Consider Alternative Methods of Staffing. For services that are temporary or short-term, agencies should also explore options such as **project employees, intermittent employees, or a shared employee** to determine if such appointment types could be a more appropriate staffing solution.

2.2 Selecting a Contractor/Limitations

2.2.1 In General: Once it has been determined that use of a contracted resource is appropriate, guidelines regarding purchasing procedures and written contracts shall be followed, including but not limited to the requirement to make a selection in a competitive manner.

2.2.2 Individual Resources: Many vendors who provide contracted resources hire subcontractors to perform the work instead of having the individuals in the vendor's direct employ. As a result, a contracted resource may have a working relationship with more than one vendor. Guidelines/limitations in this Policy relate to both, the contracted resource and the vendor. As such, agencies may not circumvent the guidelines in this Policy by procuring the same contracted resource from different successive vendors. Additionally, agencies shall require a contracted resource to attest that he/she is not providing services to more than one state agency and shall attest that he/she is not billing multiple agencies for the same hours worked.

2.2.3 Duration: The length of the engagement with a contracted resource is one factor which should be considered when determining if the service need is

appropriately filled by a contracted resource or should be filled by a state employee.

2.2.3.1 Duration for Contracted Resources Performing **Information Technology (IT) Functions**: Effective July 1, 2021, any new engagement with a contracted resource performing IT functions should be tied to project lengths as identified in a solicitation and shall be less than two (2) years in duration. If there is a specific need for a longer duration, an exemption from this policy must be sought pursuant to Section 2.2.3.2 below.

2.2.3.2 Exemption – Long-term Engagements for Contracted Resources Performing IT Functions. If the engagement with a contracted resource performing IT functions is expected to last for more than two (2) years, an exemption from this policy must be obtained. Exemption requests shall be submitted at engagement inception or at least one hundred and eighty days (180) prior to the expiration of the engagement to the Department of Administrative Services on a designated form and reviewed by the Director of Administrative Services or designee.

2.2.4 Continuation of a Contractual Relationship. In certain situations, once a service has been contracted and work has been completed, there is a follow up need for additional services. Use of the same contracted resource may be advantageous due to the individual's skill set, work product, or specialized knowledge. In these situations, agencies should consider developing a knowledge transfer plan, including training or reskilling current state employees, to allow the current workforce to meet the ongoing service need.

Before entering into another engagement with a contracted resource, Agencies are encouraged to again perform an Assessment on the service need as described above in Section 2.1. As part of this subsequent assessment, Agencies can consider information gathered from their previous assessment(s) for this contracted resource to ensure that the use of a contracted resource, instead of a state employee, remains appropriate.

It is important to note, even if use of a contracted resource remains appropriate after that analysis, agencies must still follow the process outlined in Section 2.1 of this policy, including making a selection in a competitive manner where appropriate. Successive contracts with the same contracted resource, even with a break, should not be used to circumvent the two-year limitation in this policy related to IT functions. If the contracted resource is performing IT functions and the relationship will exceed the two-year timeframe, an exemption must be sought as outlined in Section 2.2.3.2 of this Policy.

2.2.5 Other Limitations. Agencies shall not use a contracted resource in any of the following circumstances:

- The contracted service would be used to circumvent personnel ceilings and/or employment procedures for an otherwise state employee.
- The contracted service is provided by a **requisite procurement program**.
- The contracted service can be provided by another State agency.

2.3 Ongoing Evaluation

2.3.1 In General. Anytime an agency has engaged with a contracted resource, the agency should continually evaluate the characteristics possessed by a state employee and contrast those characteristics with those generally possessed by a contractor to ensure that the work being performed is not that of a state employee. If the contracted resource begins to spend significant time performing functions that can be performed by a state employee, or if the contracted resource's role otherwise evolves, and it becomes difficult to distinguish between the contracted resource's work responsibilities and those of other state employees, the agency should consult the agency's human resources office and/or legal counsel to assess the contractor's service and implement measures to preserve or reestablish an independent contractor relationship. This routine is also necessary to ensure that the agency maintains compliance with federal and state employment laws, as well as requirements for tax implications, benefits and withholdings.

2.3.2 Factors to Consider. Below is a list of circumstances that agencies should use when assessing a particular service need, or when evaluating the relationship (or potential relationship) between the agency and a contracted resource. This is not an exhaustive list; rather, it is intended to provide agencies with practical examples of the types of conditions that may be relevant. Where applicable, agencies should discuss the following considerations with their human resources office and legal counsel:

- The level of control possessed by the contracted resource to direct his/her work or the independent judgement exercised by the contracted resource in performing the work. This may include factors such as: agency's right to assign specific work assignments; prioritize tasks; and/or otherwise dictate the methods used by the contractor to complete the work.
- The extent to which the services performed by the contracted resource are integral to the operation of the work unit or the agency.
- Other than a general orientation, any specific training given to a contracted resource by an experienced State employee, or otherwise arranged by the State agency.
- The length of the relationship (i.e. how long the contracted resource has performed services for the Employer).
- The amount of investment in facilities and equipment by the contracted resource, such as the purchase and use of their own equipment, materials, supplies.

- 2.4 **Other Considerations:** Anytime an agency enters into a contract for services, the agency and the agency's legal counsel must ensure that the contract contains all necessary provisions. Agencies leveraging a DAS contract should consult the Office of Procurement Services to address any additional agency-specific provisions. In addition, the agency shall also adhere to the following guidelines while engaged in a contract for service and make all contractors aware of the guidelines:
- 2.4.1 **Ethics:** Any individual performing services on behalf of an agency through a contract for services is required to comply with the Ohio ethics laws and any applicable state or agency policy and procedure. For specific questions regarding Ohio ethics laws, please contact your agency's chief legal counsel or the Ohio Ethics Commission.
 - 2.4.2 **Public Records:** Documents or communications made by the contracted resource concerning the services being provided to the state may be a public record even if the communication is not saved on a state server or sent using a state system (e.g. state email). Agencies must work with their records offices and legal counsel to ensure that contracted resources are aware of how public records should be stored so they can be made available during and after the engagement with the state.
 - 2.4.3 **Confidential/Proprietary Information:** Information that is confidential or proprietary in nature must be maintained as such by the contracted resource during and after the engagement with the state.
 - 2.4.4 **Billing Considerations:** Agencies shall have the contracted resource attest at the time of engagement if he or she is engaged in a contractual relationship with any other state agency regardless of whether the contracted resource contracts directly with a state agency or indirectly through a consulting, staffing, or other ***intermediary organization***. Every time a contracted resource submits a record of work to an agency, it is recommended that the agency also require the contracted resource to attest that he or she is billing only one agency for the identified hours. Contracted resources have an ongoing duty to immediately inform the agency if they enter into an engagement with any other state agency.
 - 2.4.5 **Additional Information:** Agencies should consider whether any other agency-specific information, procedures and/or policies should be provided to the contracted resource before they perform services on behalf of the agency.
- 2.5 **Implementation:**
- 2.5.1 In order to ensure that all contracted resources are provided the guidelines and expectations, each agency should consider developing consistent procedures to use at the time of engagement of a contracted resource.
 - 2.5.2 Contracted resources shall be distinguished from state employees. Any access badge(s) which the contracted resource needs must be designated with the word "Contractor" visible on the badge. If the contracted resource is issued a state email address, the "nickname" portion of the email address must contain the word "Contractor" (e.g., Jane Doe (Contractor) for jane.doe@agency.ohio.gov).

- 2.6 **Scope:** Agency use of **staff augmentation** through a direct contract, **Managed Service Provider**, or other means is subject to all applicable provisions of this Policy, including the assessment described in Section 2.1.1. Where applicable, use of the term “contracted resource” in this policy also means a staff augmentation resource.

Nothing in this policy is intended to limit an agency’s ability to **contract out** functions or services. Agencies considering outsourcing functions or services should consider the state’s requisite procurement program, existing state contracts, and also refer to the State’s collective bargaining agreements for additional considerations.

3.0 Authority
ORC 124.09

4.0 Revision History

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Date	Description of Change
10/22/2019	Policy issued. This policy replaces the former DAS Directive HR-D-13, Independent Contractor Guidelines.
07/12/2021	Reissued for housekeeping.

5.0 Inquiries

Direct inquiries about this policy to:

Labor Relations and Human Resources Policy
Office of Collective Bargaining
Ohio Department of Administrative Services
1602 West Broad Street
Columbus, Ohio 43223

614.752.5393 | DASHRD.HRPolicy@das.ohio.gov

State of Ohio Administrative Policies may be found online at
www.das.ohio.gov/forStateAgencies/Policies.aspx

Appendix A – Definitions

- a. **Contract Out.** Entering into an agreement with an entity (e.g. a private company) to perform a service or function of the agency in whole or in part. It is also referred to as outsourcing.
- b. **Contracted Resource.** A non-employee performing a service pursuant to a contract. Where applicable, the term contracted resource also means a staff augmentation resource. For purposes of this policy, this definition does not include non-employees

- working for vendors awarded projects pursuant to a competitive selection process as defined by R.C. 125.01(I).
- c. Information Technology (IT) Functions. Includes but is not limited to software design, systems analysis, IT planning, network, and development. Project management services for IT-related projects are included.
 - d. Intermediary Organization. A business entity that contracts for services and provides a contracted resource to perform the services. The contracted resource may be an employee of the business entity or a subcontractor.
 - e. Intermittent Employees. A person appointed to a non-permanent position in state service that is limited in duration pursuant to a collective bargaining agreement and or Administrative Code.
 - f. Managed Service Provider. A vendor that has a contract with the State of Ohio, through which an agency can select an individual resource to perform services. It is also referred to as a Third-Party Administrator.
 - g. Project. A temporary endeavor undertaken to create a unique service or result with a defined timeframe for completion.
 - h. Project Employees. A person appointed to a non-permanent position in state service that is limited in duration based on the scope of the work (e.g. length of the assignment or task) pursuant to an applicable collective bargaining agreement.
 - i. Requisite Procurement Program. A procurement program listed in Section 125.035 of the Revised Code and section 123:5-1-17 of the Administrative Code. Prior to purchasing goods or services from outside suppliers, Ohio law requires state agencies to purchase certain goods or services from state resources, generally known as requisite procurement programs. Requisite procurement programs include but are not limited to: the Office of Information Technology at the Department of Administrative Services as established in section 125.18 of the Revised Code and Ohio Penal Industries (OPI) within the Department of Rehabilitation and Correction as prescribed in section 5147.07 of the Revised Code. State of Ohio Administrative Policy PM-01, Purchasing Procedures, provides guidance on use of requisite procurement programs.
 - j. Shared Employee. An employee who is temporarily assigned to another state agency, board or commission pursuant to section 124.389 of the Revised Code and section 123:1-46-06 of the Administrative code, or applicable collective bargaining agreement, to further the goals and objectives of the participating agencies.
 - k. Staff Augmentation. The use of non-employees (i.e. contracted resources) to supplement the state workforce. Some of the reasons staff augmentation may be used include the need for a specialized skill set, to fill in gaps (such as during the posting and selection process), or for project-based work when the duration is insufficient to justify hiring a state employee.

- I. State Employee. Any person holding a position of employment in the service of the state who is subject to appointment, removal, promotion, or reduction by an appointing officer, including such positions that are covered by a State of Ohio collective bargaining agreement.