

OFFICE OF CHIEF OPERATIONS OFFICER
Summary of State Board of Education Agenda Items
September 15, 2016

OFFICE OF CHIEF OF OPERATIONS

05. Information: Report on determining contract worker rate of pay and evaluation process of contract workers [Goals 1, 2, 3, 4, 5, and 6 – MBE Strategic Plan]

This item references Goals 1, 2, 3, 4, 5, and 6 of the *Mississippi Board of Education 2016-2020 Strategic Plan*.

Information Only

Back-up material attached

Mississippi Department of Education
Contract Worker Application Process

PURPOSE:

This document is to outline the process for procuring contract worker contracts in which the total contract value exceeds \$5,000 but is no greater than \$75,000 in any fiscal year. The total contract value includes the worker's salary; the Mississippi Department of Education's (MDE) FICA contribution; travel costs, if any; and, the MDE's PERS contribution (if the worker is a PERS retiree).

PROCUREMENT METHOD:

The contract worker positions will be procured using a Request for Applications (RFA) process. A contract worker should meet the requirements for such under the Internal Revenue Code for federal employment tax purposes. Further, common law rules are applicable to determine and require that the contract worker is an employee and not an independent contractor, requiring evidence of lawful behavioral control, lawful financial control, and lawful relationship of the parties. The MDE program office requesting the contract worker will make a written determination of this finding and provide to the Office of Procurement (Attachment A).

PROCEDURE:

Application Development Process:

The MDE Program Office needing the contract worker or workers must determine the following:

- Job Duties;
 - Minimum Qualifications;
 - Salary (Attachment B);
 - Hours per contract period;
 - Length of the contract, up to 12 months (not to exceed the current fiscal year);
 - Number of contract workers needed for the position;
1. Program Office will draft the RFA (template downloaded from the Office of Procurement website) using the information provided.
 - a. The RFA will require a completed and signed MDE Contract Worker Application, a resume, and references with current contact information.
 2. Program Office will draft an advertisement (notice) and once approved by the Office of Procurement will forward to the Office of Technology and Strategic Services (OTSS) to post with the RFA and application on the Public Notice Section of the MDE Home Page.
 3. Program Office will submit the draft RFA, draft advertisement, Contract Worker vs. Independent Contractor Determination Form (Attachment A) and the submission Form for release of an RFA to the Office of Procurement for approval.
 4. Applications may be sent via email, U.S. mail or hand delivery to the Program Office.

Receipt and Evaluation of the applications:

1. Program Office will review all applications for responsiveness (e.g. does application contain a completed and signed MDE Contract Worker Application, resume, and references with current contact information?).
2. Program Office will send letters notifying any non-responsive applicants that their application has been declared non-responsive.
3. Program office will review all responsive applications and select the top applicants.
4. Committee will then recommend the top candidate/candidates to the MDE Program Director.
5. The Program Director will decide whether or not to accept the recommendation of the top candidate/candidates in sufficient number to fill each position.

Information to be Maintained in the Program Office:

1. RFA;
2. Screen shot from the MDE website documenting the posting of the RFA;
3. All applications and supporting documents that are received;
4. The letters sent to the non-responsive applicants;
5. Executed contract;
6. All selection documents

Submission of the contract packet:

1. The Program Office will forward the contract packet to the Office of Procurement for all successful candidates receiving a contract. The Office of Procurement website provides a Checklist for Contract Workers listing all the required forms and templates. The application along with resume, references, and other supporting documentation will be submitted as part of the contract packet.

**MISSISSIPPI DEPARTMENT OF EDUCATION
INDEPENDENT CONTRACTOR VS. CONTRACT WORKER CHECKLIST**

INDEPENDENT CONTRACTORS

People such as doctors, veterinarians, and auctioneers who follow an independent trade, business or profession in which they offer their services to the public, are generally not employees. However, whether such people are employees (contract workers) or independent contractors depends on the facts in each case. The general rule is that an individual is an independent contractor if you, the person for whom the services are performed, have the right to control or direct only the result of the work and not the means and methods of accomplishing the result.

CONTRACT WORKERS (EMPLOYEE)

Under common-law rules, anyone who performs services for you is generally your employee (contract worker) if you have the right to control what will be done and how it will be done. This is so even when you give the employee (contract worker) freedom of action. What matters is that you have the right to control the details of how the services are performed.

CONTRACT WORKER OR INDEPENDENT CONTRACTOR?

To determine whether an individual is an employee (contract worker) or independent contractor under the common law, the relationship of the worker and the business must be examined. In any employee (contract worker) – independent contractor determination, all information that provides evidence of the degree of control and the degree of independence must be considered.

Facts that provide evidence of the degree of control and independence fall into three categories: behavioral control, financial control, and the type of relationship of the parties.

After reviewing each factor, indicate either Contract Worker (CW) or Independent Contractor (IC)

BEHAVIORAL CONTROL – Facts that show whether the business has a right to direct and control how the worker does the task for which the worker is hired include the type and degree of:

CW IC

— — **Instructions that the business gives to the worker.** The contract worker is generally subject to the business' instructions about when, where, and how to work. The amount of instruction needed varies among different jobs. Even if no instructions are given, sufficient behavioral control may exist if the employer has the right to control how the work results are achieved. A business may lack the knowledge to instruct some highly specialized professionals; in other cases, the task may require little or no instruction. The key consideration is whether the business has retained the right to control the details of a worker's performance or instead has given up that right

— — **Training that the business gives to the worker.** The contract worker may be trained to perform services in a particular manner. Independent contractors ordinarily use their own methods.

FINANCIAL CONTROL – Facts that show whether the business has a right to control the business aspects of the worker's job include:

— — **The extent to which the worker has unreimbursed business expenses.** Independent contractors are more likely to have unreimbursed expenses than are contract workers. Fixed ongoing costs that are incurred regardless of whether work is currently being

performed are especially important. However, contract workers may also incur unreimbursed expenses in connection with the services that they perform for their employer.

— — **The extent of the worker's investment.** An independent contractor often has a significant investment in the facilities or tools he or she uses in performing services for someone else. However, a significant investment isn't necessary for independent contractor status.

— — **The extent to which the worker makes his or her services available to the relevant market.** An independent contractor is generally free to seek out business opportunities. Independent contractors often advertise, maintain a visible business location, and are available to work in the relevant market.

— — **How the business pays the worker.** A contract worker is generally guaranteed a regular wage amount for an hourly, weekly, or other period of time. An independent contractor is often paid a flat fee or on a time and materials basis for the job. However, it is common in some professions, such as law, to pay independent contractors hourly.

— — **The extent to which the worker can realize a profit or loss.** An independent contractor can make a profit or loss.

TYPE OF RELATIONSHIP – Facts that show the parties' type of relationship include:

— — **The permanency of the relationship.** If you engage a worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, this is generally considered evidence that your intent was to create an employer-employee (contract worker) relationship.

— — **The extent to which services performed by the worker are a key aspect of the regular business of the agency.** If a worker provides services that are a key aspect of your regular business activity, it is more likely that you will have the right to direct and control his or her activities. For example, if a law firm hires an attorney, it is likely that it will present the attorney's work as its own and would have the right to control or direct that work. This would indicate an employer-employee (contract worker) relationship

COMMENTS:

I hereby certify, to the best of my ability, that the contractor has been appropriately classified according to the Internal Revenue Service code as indicated above.

CLASSIFICATION: _____

Signature _____
Bureau Director or Above

Date _____

Attachment B

Mississippi Department of Education

Contract Worker Rate of Pay Determination Form

- 1) Identify a comparable position on the Mississippi State Personnel Board's website as demonstrated through the characteristics and examples of work outlined in the job description
Or
Obtain salary data from MSIS for school personnel, I.E. superintendents, teachers, administrators, federal program directors, counselors.
Or
Obtain salary data from private industry.
- 2) Review the minimum qualifications of the position to see if comparable with the experience and educational requirements needed for the contract worker position.
- 3) Add 30% for fringe and benefits to the starting amount of the position's salary range to arrive at a total yearly compensation amount.
- 4) Divide this total yearly compensation amount by fulltime equivalent of the position to arrive at a per hour rate for the contract worker.
- 5) This rate per hour should be paid consistently among the contract workers being utilized to perform the duties.

Computation of Rate of Pay

Salary of comparable position	\$ _____
Add 30% fringe and benefits	\$ _____
Total of salary plus fringe and benefits	\$ _____
Divided by fulltime hours	_____
Equals rate of pay per hour	\$ _____

Example

Salary of comparable position	\$ 57,593
Add 30% fringe and benefits	\$ 17,278
Total of salary plus fringe and benefits	\$ 74,871
Divided by fulltime hours	2080
Equals rate of pay per hour	\$ 36.00

[TITLE OF POSITION]
CONTRACT WORKER
REQUEST FOR APPLICATIONS



Mississippi Department of Education
[Program Office]
359 North West Street
Jackson, MS 39201

Contact: **[Name]**
Phone: **[Phone]**
Fax: **[Fax]**
Date: **[Date]**

Introduction

The Mississippi Department of Education (MDE) is currently seeking a [title of position] contract worker for the [Program Office].

Scope of Work/Job Duties

The main duties of this contract worker position revolve around (insert statement describing the services to be provided). The duties include:

- [insert bullets for main duties]

Minimum Qualifications

The selected individual for this position must have knowledge of [insert minimum qualifications required, such as education, license(s), experience, the capacity and capability to perform the services within a relevant deadline, and the past record of performance with respect to such factors as control of costs, quality of work, and ability to meet schedules and deadlines]. Applicants that do not meet the minimum qualifications will not be considered and the applicant will be notified.

Compensation and Hours Worked

The position will pay [\$XX.XX] per hour and the maximum number of hours is [XX] for the time period [start day] to June 30, 2017. MDE will withhold FICA/Medicare, and federal and state withholding taxes. MDE will pay the required employer contribution for FICA/Medicare, as well as the required PERS contribution if the contract worker is a PERS retiree.

Selection Process

MDE will review acceptable applications which are completed, timely submitted, and meet the minimum qualifications.

Instructions for Applying

- Complete and **sign** the attached Application.
- Attach a list of at least three references (name and current contact information).
- Attach your resume describing your education and prior work history, including relevant work experience.

Your application packet (all of the above) should be submitted to the following address based upon the delivery method used:

Hand Deliver Proposals to:

[Name of contact in Program Office]
Office of [Program Office]
Mississippi Department of Education
Central High School, Suite [XX]
359 North West Street
Jackson, MS

Mail Proposals to:

[Name of contact in Program Office]
Office of [Program Office]
Mississippi Department of Education
Post Office Box 771
Jackson, MS 39205-0771

**Ship Proposals to:
(FedEx UPS, etc.)**

[Name of contact in Program Office]
Office of [Program Office]
Mississippi Department of Education
359 North West Street
Jackson, MS 39201

**MS Department of Education
Contract Worker Performance Review Form
(To Be Completed Twice during Contract Period)**

Contractor/Grantor Name:		Contract/Grant Number:	
Contract/Grant Start & End Date:		Total Amount of Contract:	
Project Title:			
Scope of Work:			
Mid Contract or End of Year Performance Evaluation (Circle One)			
Rating			
1 - Unacceptable	3 - Good		
2 - Poor	4 - Excellent		

4 - Excellent - This rating reflects a contract worker who has fulfilled 100% of identified deliverables for the MDE Office of _____ in focused area(s) of improvement related to the scope of work.

3 - Good - This rating reflects a contract worker who has met 90% of identified deliverables for the MDE Office of _____ related to the scope of work.

2 - Poor - This rating reflects a contract worker who has met less than 90% and more than 70% of the identified deliverables the MDE Office of _____ related to the scope of work.

1 - Unacceptable - This rating reflects a contract worker who has met less than 70% of the identified deliverables for the MDE Office of _____ related to the scope of work.

Performance Factors

Quality of Work – Exhibits the required level of job knowledge and/or skills to perform the job. Assignments completed by the employee meet quality standards. 4 3 2 1

Completion of Work – Completes tasks as assigned and meets deadlines. 4 3 2 1

Communication – Effectively uses written and verbal communication skills to proactively and thoroughly communicate job-related information and knowledge. 4 3 2 1

Technical Skills - Exhibits the ability to learn and apply new skills, stays apprised of new and current developments, and employs technology to improve efficiencies. 4 3 2 1

Planning/Organizing – Plans and organizes work, establishes appropriate priorities, anticipates future needs, and completes assignments effectively. 4 3 2 1

Customer Service – Consistently provides timely and professional service to internal and external customers, treats customers with courtesy, and follows up as needed.

4 3 2 1

Behavior Factors

Dependability/Accountability – Monitors projects and exercises follow-through, adheres to time frames, arrives on time for meetings and appointments, and responds appropriately to instructions and procedures.

4 3 2 1

Cooperation/Teamwork – Displays a cooperative attitude toward work assignments and requirements. Demonstrates consideration of others, maintains rapport with others, and helps others willingly.

4 3 2 1

Initiative – Seeks and assumes greater responsibility, searches for new and more creative ways to improve process, and monitors projects independently.

4 3 2 1

Adaptability – Adjusts to change in duties, procedures, supervisors, or work environment. Shifts priorities and focuses on tasks outside his/her normal responsibilities when needed.

4 3 2 1

Judgment/Problem Solving – Effectively analyzes problems, determines appropriate action for solutions, and exhibits timely decisive action.

4 3 2 1

Comments and evidence for any ratings of "Excellent" or "Unacceptable"

Evaluator's Recommendation

- Recommend for future services
- Suggestions for improvement (see additional comments and documentation)
- Not recommended for future services (See additional comments and documentation)

Follow-Up Activities/Additional Comments

Evaluator's Signature _____ Date _____

Evaluator's Printed Name _____ Evaluator's Title _____

Contract Worker's Signature _____ Date _____