



THE MERIT SYSTEM

Personnel Board of Jefferson County

To: Appointing Authorities
From: Lorren Oliver, Personnel Director
Date: April 20, 2006

Re: **General Overview of the Personnel Board's Review of Independent Contracts**

In 1935, the Alabama legislature, created the civil service system in Jefferson County in order to establish a system of employment that would protect classified employees from the uncertainty of the political environment. While nothing in the *Enabling Act* establishes such protection as a guarantee of continued employment, it does imply an obligation on the part of the Personnel Board to assure that no course of action by an Appointing Authority would interfere with the integrity of civil service protections.

Source of Authority:

The Personnel Board has an obligation to review proposals to utilize independent contractors which are submitted by Appointing Authorities. The legal authority under which the Personnel Board executes its review is found in the *Enabling Act* of the State of Alabama, Section 2 in pertinent part as follows:¹

The Board shall exercise constant vigilance to see that the policy of this *Act* be not evaded by the use of independent contractors ... If upon such hearing, or in the event opportunity therefore not availed of, in the absence thereof, the Board shall determine that such work is work, or of such character, as to be, or, at the time of commencement thereof, to have been, performable as well, practically, expeditiously, and economically by one or more employees appointed or appointable, under this *Act*, as by an independent contractor, and that no sufficient reason has been made to appear why such work should be performed by an independent contractor ... the Board may enter an order prohibiting the doing, continuance or completion of such work ...

¹Act No. 284 of the General Laws of Alabama (1935); amended by Act No. 248 of the General Laws of Alabama (1945).

The Personnel Board recognizes that nothing in the *Enabling Act*, implicitly or explicitly, prohibits Appointing Authorities from seeking ways of providing public services to their citizenry in the most efficient and economical manner. The Personnel Board further recognizes that the *Enabling Act* does not unconditionally bar the use of independent contractors by Appointing Authorities in accomplishing such goals. Specifically, the *Enabling Act* prevents the Personnel Board from exercising its authority over Appointing Authorities' use of independent contractors for construction of viaducts, bridges, street improvements, sewers, canals, public buildings or public utilities. Rule 11.4 of the Personnel Board Rule and Regulations also governs Appointing Authorities' use of independent contractors.

Scope of Review Process:

The Personnel Board reviews proposals for independent contractors which are submitted from an Appointing Authority where the use of such persons would or could possibly affect current classified employees or might result in employees not being hired into the classified service to perform duties contemplated under such proposals. The Personnel Board evaluates proposals on a case by case basis.

The Personnel Board has the responsibility to obtain additional information, such as budgets, reports from experts, financial data and any other pertinent materials that are required to make an informed determination on the matter. In order to facilitate the Board's review, the Personnel Director makes an initial assessment of the information and submits a recommendation to the Board for its determination on an Appointing Authority's use of independent contractors. The criteria used to consider the proposal for an independent contractor as provided in Rule 11.4 are:

- 1) Whether qualified persons are available for appointment under the Act or these Rules for performance of the type of work to be performed by the Independent Contractor at issue;
- 2) Whether the type of work at issue is such as may reasonably be expected to be continuous for an indefinite time, or whether it is periodic or sporadic in nature;
- 3) Whether the work performed, or to be performed, is customarily and generally given to Independent Contractors; and
- 4) Whether the Appointing Authority at issue has the physical facilities to perform the work for which the Independent Contractor is to be retained.

Following a review of the Personnel Director's recommendation and the information submitted to it by an Appointing Authority, during a scheduled meeting the Personnel Board decides whether the facts at its disposal support the Appointing Authorities' conclusion that the work to be performed cannot be performed as well, practically, expeditiously, and economically by one or more classified employees, as by the independent contractor. The Personnel Board may grant an Appointing Authorities request to use an independent contractor with or without conditions, restrictions or

limitations.

Unless there is substantive evidence to support a contrary finding, the Personnel Board will approve proposals to engage independent contractors where the Appointing Authority provides supporting evidence to justify the request. The Personnel Board will not substitute its business judgment for that of an Appointing Authority. Determinations by the Personnel Board are based on the facts at its disposal at the time of review. Any party of interest may present supplemental and relevant information about the proposal for an independent contractor to the Personnel Board for its further consideration.

If the Personnel Board has reason to believe that work is about to be or is being done, continued or completed by an independent contractor, it has the legal authority to request an Appointing Authority and the independent contractor involved to appear before it at a designated time and place and show cause, why such work should not be done, continued or completed by classified employees within the Merit system.