

MERIT SYSTEM INDEPENDENT CONTRACT SUBMISSION

PROCEDURE NUMBER: 2015-002

EFFECTIVE DATE: December 8, 2015

PURPOSE

Unless specifically stated herein, nothing within this policy is intended to modify or edit existing procedures regarding the submission, processing, approval, or denial of independent contracts. The purpose of this policy is to provide clarification of the Personnel Board of Jefferson County's interpretation of Act No. 248 (Enabling Act) regarding independent contractors and provide direction and guidance to Merit System jurisdictions and Appointing Authorities regarding the submission of existing or proposed contracts for services to the Personnel Board for review in compliance with the Enabling Act and Personnel Board of Jefferson County Rule 11.4.

POLICY

The Enabling Act requires that the Personnel Board "exercise constant vigilance to see that the policy of this [Enabling] Act be not evaded by the use of independent contractors" and gives the Personnel Board the "power to control, in the manner hereinafter specified, the use of independent contractors for performance of work for an Appointing Authority except in cases hereinafter specifically exempted from such control."

The Personnel Board strongly encourages the Appointing Authorities of all Merit System jurisdictions to submit contracts for services that are performed or performable by employees hired within the Classified Service to the Personnel Board for review *prior* to the execution of such contract. In situations where contracts are executed without prior review and approval by the Personnel Board, the Board has the authority under the Enabling Act to compel the Appointing Authority to submit the contract and any rationale supporting its use to the Personnel Board for review. As discussed below, this Policy 2015-002 also provides information regarding the Enabling Act's limitation on the Board's ability to restrain the use of certain independent contracts.

Contracts Subject to Review by the Personnel Board

Any contract that includes a staffing component or includes services that are performed or performable by employees in the Classified Service shall be subject to review by the Personnel Board of Jefferson County.

Contracts Exempt from Review by the Personnel Board

The Enabling Act indicates that the Personnel Board has "no power to prohibit the use of independent contractors for the construction of viaducts, bridges, street improvements, sewers, canals, public buildings, or public utilities." For purposes of clarification, the term *construction* in this context is interpreted by the Personnel Board as the planning and building of new structures, replacement structures, or major improvements to existing structures as further defined below.

Construction Defined (services not subject to Personnel Board review):

- New Construction – Contracts for services for the initial building of a viaduct, bridge, street or road, sewer, canal, public building, or public utility to include the design, planning, site preparation, and building of the given structure are exempt from review by the Personnel Board.
- Replacement Construction – Contracts for services for the total replacement of a structurally deficient or functionally obsolete viaduct, bridge, street or road, sewer, canal, public building, or public utility with a new structure constructed in the same general location are exempt from review by the Personnel Board. Such replacement construction work can include the design, planning, site preparation, demolition or destruction of the structure to be replaced, and building of the replacement structure.
- Major Improvement Construction – Contracts for the services for major improvement construction of an existing viaduct, bridge, street or road, sewer, canal, public building, or public utility are exempt from review by the Personnel Board. Major improvement construction would include work that involves changes to the structural integrity of a viaduct, bridge, street or road, sewer, canal, public building, or public utility or work that would be considered equivalent in effort and activity to new or replacement construction. Examples of major improvement construction would include widening of a two lane road to a four lane road, the building of a significant addition to an existing public building, or increasing structural capacity or integrity of a bridge. Major improvement construction does *not* include preservation, preventative maintenance, rehabilitation, repair or renovation work as defined below.

For clarification purposes, other services that are subject to Personnel Board review include:

- Preventive Maintenance – Contracts for services including the preventative maintenance of existing viaducts, bridges, streets or roads, sewers, canals, public buildings, or public utilities are *not* exempt from review by the Personnel Board. Preventative maintenance is defined as treatments, actions, or activities on an existing structure and its appurtenances that preserves the structure, retards future deterioration, and maintains or improves the functional condition of the structure (without substantially increasing structural capacity).
- Repair – Contracts for services including the repair of existing viaducts, bridges, streets or roads, sewers, canals, public buildings, or public utilities are *not* exempt from review by the Personnel Board. Repair is defined as work designed to correct a flaw or deficiency of an existing structure. Examples of repair work include, but are not limited to filling potholes in a street or road, street repaving, replacing deficit or dysfunctional parts of an existing structure, replacing a defective or leaking section of an existing sewer system, and other similar or comparable work.

- Renovation – Contracts for services including the renovation of public buildings are *not* exempt from review by the Personnel Board. Renovation is defined as renewing, redesigning, refurbishing, reconditioning, or redecorating the internal or external look or design of an existing structure. Examples of renovation work include, but are not limited to removing existing (non-load bearing) walls, building new walls, painting, changing or adding fixtures, and other similar or comparable work.
- Preservation – Contracts for services including the preservation of existing viaducts, bridges, streets or roads, sewers, canals, public buildings, or public utilities are *not* exempt from review by the Personnel Board. Preservation is defined as services, actions or activities that prevent, delay or reduce deterioration of elements, restore the function of an existing structure, keep a structure in good condition and extend its life.
- Rehabilitation – Contracts for services including the rehabilitation of existing viaducts, bridges, streets or roads, sewers, canals, public buildings, or public utilities are *not* exempt from review by the Personnel Board. Rehabilitation is defined as work necessary to correct major safety defects that does not include changes to the structural integrity of the structure. Examples of rehabilitation activities would include but are not limited to bridge deck replacement, replacement of a building roof, incidental widening of a road, street re-paving, and other similar or comparable work.

Contracts that include services falling into *both* the construction and non-exempted services outlined above shall be subject to review by the Personnel Board. The Personnel Board of Jefferson County strongly encourages any Merit System jurisdiction to consult with Personnel Board staff regarding any questions that may arise regarding a given contract or the interpretation of this policy or any contract submission procedures.

Application of Policy and Jurisdiction Inquiries

Nothing within this policy is intended to dissuade cooperation across jurisdictions or dissuade a jurisdiction from exploring ways in which it can provide its services in the most efficient and effective manner. The Personnel Board encourages discussions between Merit System jurisdictions and the Personnel Board staff in order to help facilitate appropriate and common understanding among all parties regarding contract submission and review. A jurisdiction may inquire with appropriate Personnel Board staff at any time regarding the nature of services being considered for contract in order to help understand the manner in which such services are viewed in light of this policy. The Personnel Board staff shall work cooperatively with the jurisdiction to provide information on the interpretation of such services so as to aid the jurisdiction in planning any contract procurement processes and activities (e.g., request for proposal).

Denial of a Contract

If, upon review of a contract, the Personnel Board determines that work to be contracted (a) fails to meet the criteria outlined in Personnel Board Rule 11.4, (b) is performable as

well, practically, expeditiously and economically by employees appointable under the Enabling Act, and (c) no sufficient reason is presented as to why such work should be performed by an independent contractor, then in accordance with the Enabling Act, the Personnel Board may enter an order prohibiting the completion of the contracted work after a date specified in the order. No compensation shall be paid to, or received by, an independent contractor affected by such order for work done after the date specified in the order.