

**California Institute for Regenerative Medicine
Proposed Policy and Procedures for Contracting**

Background

Under Proposition 71, the CIRM is governed by the procurement rules applicable to the University of California (UC). This statement of policy and procedures is intended to summarize these rules.

Policy

The goal of the California Institute for Regenerative Medicine (CIRM) procurement policy, which is based on the UC procurement program, is to obtain all purchased goods and services at the lowest possible price, consistent with receiving goods and services at a level that meets the need within a reasonable time frame.

Definitions

Generally, contracts can be executed to acquire the following types of materials and personal and/or professional services:

- **Common Goods and Services:** Includes standard commercial equipment, materials, supplies and services readily obtainable through conventional marketing channels.
- **Technical Services:** Provision by an independent contractor of regular technical or unique services that are categorized as duty or labor. A specific example is the Lexis Nexis contract for legal research.
- **Independent Contractor Services:** Provision of non-regular or one-time technical and/or unique functions performed by an independent contractor. A certificate or license may be required to allow the contractor to perform the services. An independent contractor relationship exists when the CIRM has the right to control only the result of the service, not the manner of performance. (Independent consultants are a special type of independent contractor and are treated somewhat differently than non-consultant independent contractors, see *below*.) Examples include transcription and/or translation services, minor construction, etc.
- **Independent Consultant Services:** Generally used on an infrequent basis to solve specific problems. An independent consultant is an individual not employed by the CIRM, or a firm, who has some professional or technical competence and provides professional or technical advice to the CIRM. The

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contract will be for services of an advisory nature that provide a recommended course of action or personal expertise, and have an end product which is basically a transmittal of written or verbal information. The Spencer Stuart contract to conduct a Presidential search is an example. (Note: "Consultant" here is a general term and is distinct from the term consultant as used in the Political Reform Act.)

- **Information Technology Services:** Depending on the type of services, these can fall into any of the other four categories above. However, there may be special requirements or handling for such contracts.
- **Legal Services:** A legal services contract is a type of consultant contract for services from a licensed attorney. Again, special requirements and/or notifications may be required. The contract with Remcho, Johansen and Purcell is an example.
- **Expert Witnesses:** Generally needed for a non-regular or infrequent time period to provide intelligence on a specific topic about which their authority is recognized. They will usually possess some license or title (e.g. – medical doctor). The contract with Alta Charo is an example.

All materials acquired and personal and professional services contracted for should relate to CIRM/ICOC administration and management goals and responsibilities.

Selecting a Vendor

Generally, the use of a bid process will ensure that the goods or services acquired are at the lowest possible cost.

Common Goods and Services

The UC procurement system requires that a competitive bid be conducted if the item to be purchased is a Common Good or Service of more than \$50,000. A bid process involves the solicitation of at least three bids. The Department of General Services has already entered into discounted contracts with vendors to provide many of these types of goods or services. CIRM can use these contracts to make any needed purchases without conducting a bid process.

Independent Contractors and Consultants

Generally, contracts with an independent contractors and consultants should be used when it has been determined that the contractor or consultant's services are urgent, special, temporary, or highly technical, and cannot be performed economically or satisfactorily by existing staff during the course of their normal responsibilities or duties.

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Contracts with Independent Contractors or Consultants are not required to be competitively bid. However, if the service will be needed for an extended period of time, bidding should be considered. If the service is generic (not unique), the state's Master Services Agreement (MSA) Program can be used to select Independent Contractors or Consultants. Under MSA, vendors are pre-selected by the DGS. A bid process using MSA only requires that three vendors from within the service category be provided with a summary of the services to be provided. They will be asked for a price quote and a selection is made based on the quote.

Negotiated Contracts

In cases where a bid process is not required or necessary, contracts can be negotiated directly with a single person or firm but CIRM is obligated to be cautious in such negotiations to get the best price possible. Factors that support a decision that bids are not necessary include, but are not limited to, the following:

- When the services needed must be delivered within a specific time period that will not allow competitive bid requirements to be conducted.
- When the services are so unique that only a few contractors are likely to be able to perform them.
- When the contractor has specific knowledge or skills that will allow the service to be provided without delays.

Contract Formats

There is a standard format that must be used for contracts. In addition, contracts must include standard boilerplate language and/or attachments, whether they are bid contracts or negotiated. Boilerplate language and/or attachments are intended to meet the requirements of state and federal law. Staff reporting to the Chief Administrative Officer will develop the contract and attach appropriate boilerplate language and/or attachments.

NOTE: A proposed contractor may request that an employee of CIRM sign a "letter agreement" which commits them to provide services and commits CIRM to pay for certain services. These agreements are not authorizations to pay. The contractor cannot be paid until a proper contract is executed. Under state law, all contracts must be submitted to the Claims Audits Bureau of the State Controller's Office for payment. Without the contract on file, the SCO will not pay any invoices. In addition, should a problem arise where a contract cannot be executed, the person signing the letter agreement could be liable for the costs of any services provided.

How to Obtain a Contract

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To request a contract, provide the Chief Administrative Officer with the following information as soon as possible (e -mail is fine and probably preferable to expedite the process):

- A description of the goods or services needed. This can be in a narrative or a list of bullets. List any unique terms or conditions (time frame for product, method in which it is to be delivered, presentations to be made, surveys to be conducted, etc).
- The period over which the services are to be provided. If it is for a single day, remember to include travel days if appropriate.
- The costs by category: fees, hourly rates + the estimated number of hours, travel expenses (the contractor's travel costs can be listed and claimed by contractor or CIRM can arrange and directly pay them) and any other special expenses (printing for a report, etc).
- Estimated total of all costs.
- Whether a bid will be used to select the vendor (including use of MSA) or whether you have a specific person or firm already pre-selected. If the latter, provide the rationale for selecting this specific person or firm.
- Once a vendor has been selected, provide a contact person, including name, address and telephone number. Also, provide a copy of the resumes of all persons (and the firm) who will be involved in providing services.
- The name of the contract manager – who in CIRM will oversee the work of the contractor.

As soon as this information is received, the staff reporting to the Chief Administrative Officer will develop and execute the contract including coordinating any bid process. Once the contract is executed, a will be sent to the vendor and the contract manager. A copy will be maintained by the Office of the Chief Administrative Officer.

Contract Management Responsibilities

The contract manager will be required to participate in the selection process, approve the final contract and monitor the performance and attest that the deliverables have been received when invoices come in for payment.

Don'ts

Please keep the following DON'TS in mind as the requestor and/or contract manager (NOTE: failure to avoid these can result in either a non-enforceable contract and/or personal liability on your part):

- Don't require the contractor to start work until the contract is executed.
- Don't change the description of the work after the contract is executed. Such a change may require that the contract be amended (see below).

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- Don't sign the contract as the CIRM authorized signatory unless you are authorized in writing to do so. (NOTE: Currently only the Chair of the Independent Citizen's Oversight Committee, the President of CIRM and the Chief Administrative Officer are authorized to execute contracts.)
- Don't sign any contractor's form binding you to some outcome (e.g. – a letter agreement authorizing work to begin).
- Don't authorize payment of an invoice unless the work has been performed satisfactorily. (This doesn't mean that all work under the contract has been completed, just that work to date has been performed in a timely and satisfactory manner.)
- Don't direct the contractor to do work that is not specifically described in the contract, to do work outside the time period of the contract or to incur costs above the total cost. All of these circumstances require an amendment and/or an extension to the original contract. (NOTE: Use the same process described above for requesting contracts to request amendments or extensions to address these changes).

Summary

It isn't necessary that CIRM staff become experts in contracting processes. However, they should become familiar with the content of this Policy and Procedures statement to avoid problems. This will allow CIRM to obtain necessary goods and services at the lowest price which ensures that the maximum amount of funding will be available for research.

Contact

Office of Chief Administrative Officer