

SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: 9/14/06
Department Name: Human Resources
Department No.: 064
Agenda Date: 9/26/06
Placement: Administrative
Estimate Time: 30 min on 10/3/06
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors

FROM: Susan Paul, Assistant CEO/HR Director
568-2817

STAFF Theresa Duer, Deputy CEO/HR Director
CONTACT: 568-2822

SUBJECT: Policy -- Contractors on Payroll

Recommendation(s):

That the Board of Supervisors:

Set a hearing for October 3, 2006, to consider policy recommendations regarding use and compensation for Contractors on Payroll (COPs).

Alignment with Board Strategic Plan:

The recommendation(s) are primarily aligned with Goal No. 1. An Efficient Government Able to Respond Effectively to the Needs of the Community.

Executive Summary and Discussion:

In order to ensure countywide consistency regarding the use and compensation for Contractors on Payroll (COP's), the Board requested that the County Executive Officer (CEO) review this issue and return with Policy recommendations.

Background:

In 1993, the Internal Revenue Service (IRS) began reviewing the use of the "independent contractor" designation by employers nationwide. As a result of this review, the County engaged Deloitte & Touche, an independent CPA firm to review the County's use of independent contractors. The purpose of the review was to ensure the County's compliance with IRS regulations.

Independent contractors are defined as independent business people who are hired to perform specific tasks, usually highly skilled or technical. Since independent contractors are in business for themselves, they are not the County's employees and therefore not eligible for unemployment, disability or workers compensation benefits. The County does not have to pay employer payroll taxes, provide workers compensation insurance and is typically not liable for the contractor's actions. The IRS has specific tests or rules that must be met in order to be considered an independent contractor.

IRS regulations do not permit an individual to be classified as an independent contractor if the employer maintains control over the contractor's performance, uses County owned tools and facilities and works hours that are determined by the County and not the contractor. If the employer retains these as well as other certain minimum controls over the contractor, the IRS will interpret the relationship as that of employer and employee, resulting in the necessity to pay all applicable taxes and benefits the County would normally pay to one of its employees.

As a result of the Deloitte and Touche review, the County established a "contractors on payroll" designation for individuals who were working at that time as independent contractors but did not meet the IRS requirements for the designation. General guidelines to determine an independent contractor versus contractor on payroll designation were also provided to County departments.

In 2003, the use of contractors on payroll was reviewed by the County's Internal Audit Division. In November 2003, Internal Audit prepared a report that included the conclusion that contractors on payroll were being used "judiciously, and in most cases appeared necessary to facilitate the cost-effective and timely provision of the myriad of governmental services to the citizenry".

A review of COP's was again undertaken in 2004, which included their usage, role and necessity in the organization. Policies were considered, but not formalized. As a result of the Board's request this year, the COP issue has been reviewed, and a countywide survey was conducted to facilitate this endeavor. Departments were asked to provide the following information:

- Usage of COP's
- Types of positions
- Time frames for usage
- Hourly rates
- Benefits
- Justification for usage

In general, the survey revealed the following:

- Greatest usage of COP's is in the medical professions, primarily doctors and medical specialists
- Inconsistent practices regarding compensation and benefits

The consistent conclusion of each of the reviews (1993, 2003, 2004, 2006) has been that the Contractors on Payroll designation is required to provide the County with the flexibility needed to meet operational demands and that establishing policy guidelines would facilitate consistency throughout the organization.

Recommendations

Establish a policy that sets forth employment and compensation criteria for COP's throughout the County.

A complete policy will be provided prior to the October 3, 2006 Board meeting. Key recommendations will include the following:

1. COP's may be utilized by departments when the work cannot be performed by an independent contractor as determined by the IRS.
2. COP's may be utilized to fill positions where there is a temporary funding source.
3. COP's may be utilized when there is a need for specialized work to be performed and/or where there is no existing job classification.
4. COP's may be utilized where the work is sporadic and does not warrant a full or part-time regular position.
5. COP's who work at least 1040 (50% FTE) hours annually are mandatory members of the Retirement System in accordance with Government Code Section 31469, 31551 and 31561.
6. COP's may receive up to 160 hours of leave time for every 2080 hours worked. COP's working less than 2080 hours would receive a prorated amount.
7. Salaries for COP's should be set after considering the salaries of:
 - Regular classifications
 - Unique skills and licenses required for the successful performance
 - MarketSalary must be reviewed by CEO/HR.
8. Proposed contracts are reviewed by CEO/HR prior to obtaining Board of Supervisor approval.