

# The University of Oklahoma

## Independent Contractor or Consultant Guidelines

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## Purpose

This Guideline and its corresponding procedures define departmental responsibilities relating to Independent Contractors, consultants, or payment for professional services (including U. S. citizens and foreign nationals) for the University of Oklahoma and is the result of collaboration between Human Resources and Financial Services of the Norman and HSC campuses.

Payments for professional services, their reporting and taxability are governed by the Internal Revenue Code and the Oklahoma State statutes.

## Introduction

The criteria used for determining whether an individual should be considered an employee or Independent Contractor are established by the Internal Revenue Service (IRS), Department of Labor, and the courts. The IRS has focused on this issue and given high priority to the classification of employment relationships and the tax implications.

The IRS uses three characteristics to determine the relationship between businesses and workers:

- **Behavioral Control** covers facts that show whether the business has a right to direct or control how the work is done through instructions, training or other means
- **Financial Control** covers the facts that show whether the business has a right to direct or control the financial and business aspects of the worker's job.
- **Type of Relationship** factor relates to how the workers and the business owner perceive their relationship.

The University uses the [Independent Contractor Form \(ICF\)](#) to collect information needed by Human Resources Employment and Compensation to make this determination.

## Penalties

The penalties for misclassification can result in the University being held responsible for under payment of taxes including federal and state income tax, Social Security and Medicare taxes, and federal unemployment taxes. Whether inadvertently or intentionally, misclassification of workers as Independent Contractors may result in charges to the department for the taxes, penalties, and interest. Therefore, all University departments will adhere to the procedures outlined in these guidelines.

## Definition of Employee

In general, an **employee** is an individual who performs a service for the University and operates under the direction and control of the University. Direction and control can be inferred to exist when the University has the **right** to control the results as well as the means and methods of the worker.

## **Definition of Independent Contractor**

An **Independent Contractor** (IC) is a person engaged by the University on a limited basis to perform specific functions or tasks at his or her own discretion with respect to the means and methods used to accomplish the assignment. Independent Contractors are also known as consultants or independent service providers.

In order to qualify as a contractor, the service provider must be an individual

1. utilizing a social security number for tax purposes and
2. providing services, not goods or products.

Purchases of goods or products must follow the normal purchasing and payment guidelines. Goods may only be included in a contractor's invoice if they are part and parcel of the service provided, such as Sole Provider disc jockey who provides confetti, bubbles, or foam as part of that entertainment service. If a product is simply delivered, then the product must be purchased under vendor guidelines.

## **Prohibitions**

State law prohibits any State agency (the University) from entering into a sole source contract or a contract for professional services with or for the services of any person, who has terminated employment with or who has been terminated by that agency for one (1) year after the termination date of the employee from the agency. (Oklahoma Statute Title 74, Section 85.42, Oklahoma Central Purchasing Act.).

No institution within the Oklahoma State System of Higher Education shall enter into a contract for consultant services with any person who has retired from employment with any institution for two (2) years after the retirement date of such person. (Oklahoma Statute Title 70, Section 3227 Legislative Intent regarding Contract for Consultant Services.)

## **General Requirements**

The Department works with Human Resources Employment and Compensation to determine whether an individual qualifies for Independent Contractor status. The Associate Vice President and Chief Human Resources Officer may delegate authority to make this determination to departments with a high volume of work being done by persons considered to be Independent Contractors. In these instances, responsibility for properly classifying these individuals, as well as the financial liability rests with the delegated department.

The department is responsible for ensuring that the work is performed.

## **Forms**

The [Independent Contractor Form \(ICF\)](#) requests information needed to determine whether the individual qualifies for Independent Contractor status and must be approved **before** engaging the services of any individual as an Independent Contractor.

A Foreign National Information Form [Norman](#) or an International Information Form [HSC](#) must be completed when the person seeking Independent Contractor status is a foreign national.

## **Vendors**

If the service provider is a business operating with a Federal Employer Identification Number (EIN), payment requests will follow purchasing and payment guidelines for vendors and approval through Human Resources Employment and Compensation is not required unless specifically requested.

### **Approval Required Before Payment**

The contractor must fill out and sign the Independent Contractor Form. Department budget approver must authorize and send form to HR for approval of contractor status. The department should not allow any services to be performed by the contractor prior to obtaining final approval.

**No payment can be made until the services have been performed and proper approvals and documentation are provided to Accounts Payable/Financial Services.**

### **Approval Required Every 12 Months**

If the service provider is used more than once a year by the same department for the same services, the Independent Contractor Form need only be completed once every twelve (12) months from the date the original form was approved. The date range indicated on the approved Independent Contractor Form might not coincide with the calendar year, tax year or fiscal year. During the 12 month period from the date of approval, departments may make copies of the approved Independent Contractor Form for processing subsequent payments. A new Independent Contractor Form need **not** be completed for each invoice or incident of service if the service remains the same and is provided within the date range on the approved form.

## **Before Services Can Be Performed**

The following section addresses organizational responsibilities **before** services by an Independent Contractor are performed.

### **Department Responsibilities**

1. Have the contractor complete and sign the Service Provider page of the form.
2. Obtain certification signature from department budget authority. Department budget authority reviews completed Independent Contractor Form and certifies that information was completed by individual applying for contractor status and that the information on the Independent Contractor Form is true and accurate to the best of his or her knowledge.
3. Send the completed and reviewed Independent Contractor Form to Human Resources Employment and Compensation.

### **Special Instructions for CCE, Norman Campus**

If the Department is a part of the College of Continuing Education (CCE) family of departments, they will send the Independent Contractor Form to the **CCE VP/Provost Office** after the approval by the appropriate sponsor.

## Foreign Nationals

It is critical that departments utilizing international persons complete the required paperwork as far ahead of time as possible so that the international person will not experience any delays in receiving payment for services rendered.

1. Indicate that the service provider is a Foreign National and where the work will be performed (within or outside of the U.S.).
2. For work performed in the U.S., require the individual to complete the appropriate campus-specific information form, [Norman](#) or [HSC](#), attaching required documents as indicated on the forms.
3. Require the individual applying for contractor status to complete the Service Provider page of the form.
4. Obtain certification signature from department budget authority. Department budget authority reviews completed Independent Contractor Form and certifies that information was completed by individual applying for contractor status and that the information on the Independent Contractor Form is true and accurate to the best of his or her knowledge.
5. Send the documents to Human Resources Employment and Compensation.

## Human Resources Employment & Compensation Responsibilities

1. Review Independent Contractor Form and IRS regulations to determine whether the person is eligible for contractor status.
2. Notify the requesting department of determination.
  - a. If approved, HR Employment and Compensation will return approval to department. **Norman Campus** will send copy of approved Independent Contractor Form to Financial Services for set up in CrimsonCorner. Department will not need to send Supplier Submission Form to Financial Services for set up of approved Independent Contractors. At **HSC Campus**, the department will request the appropriate vendor form from the vendor and forward with the approved Independent Contractor Form to the Vendors section in Accounts Payable.
  - b. If denied, HR Employment and Compensation will advise department that individual should be hired as a temporary employee or paid as a vendor.
3. **For Foreign Nationals:** If the contractor is a foreign national, forward copy of Independent Contractor Form and attachments to Accounts Payable/Payroll International Tax Specialist to determine if there are tax withholding/reporting requirements on the payment.

## Accounts Payable/Payroll Tax Specialist Responsibilities

1. Review to determine if there are tax withholding/reporting requirements on the payment.
2. Generate a tax treaty exemption Form 8233 for the contractor, if eligible. No taxes or reduced taxes will be deducted from the fee for service payment for a person who qualifies for a tax treaty exemption and signs the appropriate tax treaty exemption form. If not eligible for a tax treaty exemption, the contractor's services will be taxed at a cumulative rate of 38% (30% federal and 8% state).

3. Send the approved Independent Contractor Form back to the department with a copy to HR Employment and Compensation. Forward any eligible tax treaty documents to the department for the contractor's signature.

## **After Services Have Been Performed**

The following section addresses organizational responsibilities **after** services have been provided by the Independent Contractor.

### **Payment for Services**

The Department works with Accounts Payable/ Financial Services to provide payment to the Independent Contractor after services are provided.

### **Department Responsibilities**

1. Verify that the services have been performed satisfactorily.
2. Obtain a detailed invoice.
3. Forward the approved invoice/voucher to Accounts Payable/Financial Services along with a copy of the approved Independent Contractor Form. Attach additional pertinent documentation, if any. During the 12 month period from the date of approval, departments may make copies of the approved Independent Contractor Form for processing subsequent payments. A new Independent Contractor Form need not be completed for each invoice or incident of services as long as the services remain the same and are provided within the date range on the approved form.
4. Retain the original approved Independent Contractor Form for seven (7) years for audit purposes.
5. **For Foreign Nationals:** Obtain copies of required immigration documents such as the passport and I-94 card for foreign nationals. If eligible, obtain contractor's signature on the appropriate form(s). Route the approved invoice/voucher request to Accounts Payable/Financial Services along with **copies** of the approved Independent Contractor Form, appropriate campus-specific information form, [Norman](#) or [HSC](#), and any other immigration documentation (if applicable), such as a passport, I-94 and signed tax treaty form, for review and payment approval.
6. **HSC Campus:** Sign the original invoice authorizing payment, including the purchase order number on the invoice, for encumbrances by Purchase Order. Enter all non-purchase order invoices on a direct payment voucher into PeopleSoft.
7. **Norman Campus:** Refer to CrimsonCorner procedures. <http://crimsoncorner.ou.edu/>

### **Reimbursement for Travel Expenses**

The State of Oklahoma travel voucher cannot be used for an Independent Contractor's travel expenses. Travel expenses should be included in the contractor invoice itemized list-not on separate documents.

Travel expenses that are listed separately from the fee for services **can be excluded** from the contractor's income for 1099 reporting purposes **if the travel expenses are accounted for with original detailed receipts and/or reimbursed at government rates (i.e. federal mileage**

**rate and/or GSA per diem rates).** Otherwise, travel is included in the lump sum of the invoice and reflected in the 1099 statement.

Detailed receipts must be attached for any lodging, airfare, etc. Mileage reimbursement must include the location the travel began at, any points that business was conducted, and the final destination. See the example below regarding traveling from Kansas City to Oklahoma City:

Fees	<b>\$1,000.00</b>
Airfare	<b>\$250.00</b>
Per diem 07/01/06 0600 to 07/03/06 1800 Norman, OK	<b>\$97.50</b>
Mileage (Kansas City vicinity airport) 30 @ 44.5	<b>\$13.35</b>
<b>Total</b>	<b>\$1,360.85</b>

### **Accounts Payable/Financial Services Responsibilities**

1. Review the documentation for payment approval, once the approved invoice/voucher request has been received from the department.
2. Following your campuses financial procedures, issue payment to the contractor.
3. Maintain tax records on any payments made to individuals and generate the appropriate 1099 forms, sending copies to the contractor and IRS.

### **Payments to Foreign Nationals**

1. Provide tax documents to the Accounts Payable/Payroll International Tax Specialist for any tax treaty exemption claimed. The Specialist will mail copies of the tax documents to the appropriate federal and state offices.
2. Withhold and report taxes withheld to the Office of Management and Enterprise Services.
3. Maintain tax records on contractor payments made, by generating the 1042-S forms and sending copies to the contractor and the IRS.

### **Internal Audit Responsibilities**

Conduct audits on the above documents to monitor University compliance with all applicable IRS regulations, Federal and State laws and University policies.

### **Forms, Documents and Other Resources**

All forms, documents, and resources related to the University's Independent Contractor policy can be found online at [hr.ou.edu/IndependentContractor.asp](http://hr.ou.edu/IndependentContractor.asp).

<b>Questions Regarding</b>	<b>Should go to:</b>
Payments and 1099/1042-S forms, Foreign nationals, tax treaties and withholding	Accounts Payable/Payroll International Tax Specialist/Financial Services
Independent Contractor determinations	HR Employment and Compensation