Introduction

The purpose of this policy is to provide guidelines to University of Oklahoma business units regarding the use of Independent Contractors providing professional services. These services must comply in a way that satisfies federal, state, and University regulations. It is preferable to hire an individual as an employee rather than to contract as an Independent Contractor. If a department desires to use the services of an Independent Contractor, then it must follow the classification process described here to comply with government Independent Contractor regulations.

Independent Contractor Services defined: Independent contractors provide professional services that provide intellectual and creative expertise to a University business unit on a temporary basis. These services can require specified experience and technical skills/abilities to complete a need or project that the University otherwise would not be able to complete without these certain skill sets. Other considerations when identifying someone as an independent contractor may include:

- If the worker supplies their own equipment, materials and tools
- If all necessary materials are not supplied by the University
- If the worker can be discharged at any time and can choose whether or not to come to work without fear of losing employment
- If the worker controls the hours of employment, thus indicating they are acting as an independent contractor
- Whether the work is temporary or permanent.

Again, the nature of the work will help define the relationship. When work is considered integral to the University, it is more likely that the person is an employee. On the other hand, work that is temporary and non-integral may imply Independent Contractor status.

Policy Statement

This Independent Contractor policy applies to any University of Oklahoma (Norman, Health Sciences Center, and Tulsa) department or business unit that contracts and conducts business with a service provider (a person or entity) for supplemental services paid by the University. The manner which Independent Contractors are paid should still follow University policies and procedures, regardless of funding source. Any University department or business unit that has intentions of outsourcing services must adhere to University policies and approval procedures before any services can be provided by the Independent Contractor.
Penalties

The penalties for misclassification can result in the University being held responsible for payment of taxes including federal and state income tax, Social Security and Medicare taxes, and state 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.

Prohibitions

State law prohibits any State agency (the University) from entering into a sole source contract or an independent contract for professional services with or for the services of any person who has terminated employment or 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).

Procedure

Prior to any services performed by an external individual or business to provide professional services to the University, the Independent Contractor is to create a request through the OU vendor portal to be used on the requisition. The department will then submit and approve the requisition attaching the Independent Contractor form and all other supporting documentation.

Services that Do Not Need an Independent Contractor Form

Services that use the designated General Ledger codes below in the requisition will be routed to Purchasing and not require HR review.

- 83110-Interpreters/Translator: Foreign Language & Deaf (deaf interpreters exempt by State)
- 830200-Honorariums (not a payment for services)
- 830400-Guest Speakers/Presenters/Workshop Facilitators (services for less than 5 consecutive days)
- 830400-Announcers & Commentators for Athletic events (services for less than 5 consecutive days)
- 821580-Sporting Officials for Intercollegiate Athletic events
- 830400-Performers, entertainers, and professional athletes who provide entertainment services to the University for a fee (DJ’s, singers, bands, comedians, magicians, and motivational speakers) (services for less than 5 consecutive days)
- Research Subject Fee (contract not required)

Services that Need an Independent Contractor Form

Human Resources Compensation will review the completed Independent Contractor Form (ICF) and requisition to determine if the terms of the services meet the qualifications of an Independent Contractor before being routed to Purchasing. Within this submission, the University department is to include all supporting documentation of the review process including the contractual agreement with the proposed Independent Contractor. Contractors or consultants that require access to confidential or sensitive information will be required to agree to and sign a University confidential and non-disclosure agreement.
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.

The process of selecting and hiring an Independent Contractor should be a thorough process that selects the most qualified individual or entity to perform the desired work. Any work performed should be paid appropriately for the type of service that is being provided to the University business unit.

Independent Contractors must have proof of business, e.g., company licensure, a business filing (corporation, limited partnership, LLP, fictitious name, etc.) from the Secretary of State, FEIN, TIN, SSN number, or tax return that provides legitimacy of services. Human Resources will evaluate the request to see if the proposed professional services satisfy certain criteria based on an ABC testing method.

The ABC testing method evaluates and must satisfy all A, B, & C;

A. Control – Absence of Control
   • The service provider is free from the control and direction of the hiring entity in connection with the performance of the work, both under contract and in fact.

B. Usual Course of Business – Business of the Worker
   • The service provider performs work that is outside the usual course of the hiring entity’s business.

C. Established Trade or Business – Customarily engaged
   • The service provider is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed. (Referred to as “economic realities”)

If the submission is deemed to be an Independent Contractor, Human Resources will approve the requisition so it can be sent to Purchasing.

If during the review process the services are not deemed to meet the Independent Contractor criteria by the ABC testing method, the request will be denied and the University business unit will be advised to discontinue all communications and to not pursue the outside services. The University business unit is to use an existing internal employee, hire a temporary employee, or utilize the PEAK program service.

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.

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