

Regulations Library

The University of Utah

Policy: 3-111 Rev: 4

Date: April 27, 2010

Policy 3-111: Independent Consultant and Independent Contractor Professional Service Agreements

I. Purpose

To outline university policy governing the use of agreements for the services of independent consultants and certain independent contractors.

II. Definitions

A. Employer-Employee Relationship:

A relationship that exists when the university has the right (whether or not it exercises the right) to supervise and control the manner of performance as well as the result of the service.

B. Independent Contractor Relationship:

A relationship that exists when the university has the right to control only the result of the service, not the manner of performance.

C. Responsible Administrative Officer:

A university officer holding a position as department head or director or higher rank who exercises immediate line responsibility over the project director or other person requesting authorization to enter into an agreement to engage the services of an independent consultant or independent contractor.

D. Independent Consultant:

An individual or organization under agreement to provide primarily professional services (including legal, accounting, actuarial, scientific, engineering, etc., or technical advice to the university) in an independent contractor relationship.

E. Independent Contractor:

An individual or organization under agreement to provide services at a stated price or rate. An independent professional contractor differs from an independent consultant in that the consultant's service is, for the most part, that of providing professional or technical advice, whereas the contractor's service is to perform specific tasks.

III. Policies

A. Employee/Independent Contractor Classification Checklist (see **Consultant/Independent Contractor Agreement**) must be duly executed before payment for consulting or professional services can be made to an independent consultant or independent contractor. Such agreements are appropriate under the following conditions:

1. When specifically authorized in the provisions of a contract or grant and payment is from restricted funds.

2. When paid from general and development funds, and a determination has been made by a responsible administrative officer that the services are special, temporary or highly technical in nature and cannot be performed economically or satisfactorily by existing university personnel during the course of their normal university responsibilities or duties.
- B. The use of consulting and professional service agreements under this Policy and Procedure is expected to be infrequent and primarily for the purpose of solving clearly delineated problems of short-term duration or to provide specific expertise not otherwise available.
1. Selection of individuals to perform such services shall be made on the basis of qualifications, resources, experience, needs of the university and cost to the university.
 2. An employee of the university may be engaged as a consultant or to provide professional services as an independent contractor only if the contract services to be performed (a) are not within the normal performance expectations of the university arising from the employee's university position, (b) are to be performed outside of the normal working time and work assignment of the employee and not under the direction, supervision, or control of the university, (c) do not involve a conflict of interest prohibited by the Utah Public Officers' and Employees' Ethics Act (see **Policy 1-006**), and (d) are to be provided across departmental lines, i.e., are not to be performed for an officer or principal investigator who holds an appointment in the same academic department or other operating unit as the contractor.
 3. The specialized and unique qualifications required of independent consultants and independent professional service contractors are incapable of being evaluated on a comparative basis in relation to objective criteria or specifications. Accordingly, the selection of such individuals shall be done on an informal basis and without competitive bids or proposals.
- C. An independent consultant or contractor may not be used to direct or carry out any major portion of a program. If it is desired to engage the services of an individual to direct or to participate extensively in a continuing program, that person must be employed through established university employment Procedures.
- D. Independent consultants and independent contractors, as such, are not employees and shall not be entitled to employee benefits. They shall not be described or recognized other than as "consultants or independent contractors" in any published report or other document relating to the services covered by the agreement.
- E. An independent consultant or professional service contractor may not hire any employee of the university to perform any service covered by the consultant or contractor agreement. In addition, if the work is to be performed in connection with a federal contract or grant, an independent consultant or professional service contractor shall not be a federal employee; and the independent consultant shall not hire any employee of the U.S. Government to perform any service covered by the agreement unless the express written approval of the responsible federal contracting agency is obtained first.
- F. Scope
1. The policies and Procedures set forth herein apply to securing the services of independent consultants and independent professional persons with respect to all university activities, except as provided in paragraph III.F.2.
 2. The policies and Procedures as set forth herein do not apply to:
 - a. Appointment of architects, engineers and design consultants engaged in accordance with the applicable provisions of **Policy 3-101**
 - b. Contracted services provided by nonfederal funds as follows:
 - i. Contracted services acquired through Procurement & Supply Management.

- ii. Appointment of a consultant by or with the approval of the Board of Trustees, the president or a vice president.
- c. The procurement of services of contractors other than professional persons or independent consultants.
- d. Contracted entertainment services where a formal entertainment agreement is prepared and submitted as documentation to support payment from nonfederal funds.
- e. Payments made to donors and other laboratory subjects for incidental services provided, such as blood donations, experimental tests and/or samples, etc.
- f. Payment from funds other than restricted accounts (designated federal funding) of fees or honoraria to occasional guest lecturers, or participants in academic programs, who are not employed by the university. (See **Policy 3-062.**)

G. Procedures

1. Written Agreement for Services

- a. Any agreement for the services of an independent consultant or independent professional contractor, which is not excluded from this policy by Section III.F.2. above, shall be prepared in the approved standard form (see **Consultant/Independent Contractors Agreement Attachment A.**)
- b. The agreement is binding upon the university only if it is signed by the project director or other authorized officer and by the responsible administrative officer.
- c. The following additional Procedures must be followed for an agreement funded in whole or in part through restricted accounts (designated federal funding):
 - i. After approval and signature under paragraph (b), the agreement must be transmitted to the Office of Sponsored Projects for review to assure compliance with federal regulations and final approval and signature by the vice president for research or designee.
 - ii. When the vice president for research or designee is satisfied that the agreement has been duly executed by the university and the consultant or contractor, a photocopy of the original fully-signed agreement, together with a copy of all supporting documents shall be transmitted to the Accounts Payable Office. The original agreement and supporting documents shall be kept on file in the Office of Sponsored Projects.
- d. There shall be no extension of the termination date, expansion of the scope of the original agreement, or increase in amounts payable thereunder without prior written approval by the responsible administrative officer or authorized representative. Modifications and amendments to agreements funded in whole or in part through restricted accounts (designated federal funding) must also receive the approve of the vice president for research, or designee, after review as provided in (c) above.
- e. A purchase order may not be used in lieu of an agreement required by this Policy and Procedure as a means of securing and paying compensation for the services of an independent consultant or an independent professional service contractor.
- f. An honorarium payment may not be used in lieu of an agreement required by this Policy and Procedure as a means of paying compensation for services to the university. (See **Policy 3-062.**)

H. Required Documentation

- 1. Documentation required with each request for payment of services covered under this policy must include the following:

- a. A completed Payment Request signed by the appropriate administrative officers. The signature of the officers signifies and acknowledges that performance has been rendered in accordance with the contract. Except as provided in paragraph 2, consultant services and independent professional contractor services will be charged to accounts 62100 through 62121.
 - b. If the consultant or independent professional contractor is an employee of the university, payment must be requested on an additional compensation form and submitted to payroll for processing. These payments must be charged to accounts 50800 through 50821.
 - c. A copy of the executed agreement for services, as defined in Section III.F.1., which provides for:
 - i. Nature and extent of services.
 - ii. Compensation and reimbursement of expenses.
2. In addition to the requirements of paragraph 1, requests for payment of consultant or professional service contract charges from designated federal funds must be accompanied by:
- a. A statement indicating in what respects any services charged to a federal contract or grant will benefit the project.
 - b. An invoice supplied by the contractor or consultant which specifies:
 - i. The date the work was performed.
 - ii. A specific description of the nature of the services rendered.
 - iii. The hourly or daily billing rate, and the total amount claimed to be due.
 - iv. Reimbursable expenses, if any, with supporting vouchers.

IV. Rules, Procedures, Guidelines, Forms and Other Related Resources

- A. Rules *[reserved]*
- B. Procedures *[reserved]*
- C. Guidelines *[reserved]*
- D. Forms *[reserved]*
- E. Other Related Resources *[reserved]*

V. References

- A. **Policy 5-204**, Remunerative Consultation and Other Employment Activities
- B. **Policy 1-006**, Conflict of Interest
- C. **Policy 5-403**, Additional Compensation and Overload Policy
- D. **Policy 3-062**, Honorarium Payments
- E. **Policy 3-101**, Solicitations of Bids, Proposals and the Award of Procurement Contracts

VI. Contacts

Acting as the Policy Owner, the Office of the Director for Procurement & Supply Management is responsible for answering questions regarding the application of this Policy. Acting as the Policy Officer, the Office of the Vice President for Administrative Services has the authority to allow exceptions to this policy.

VII. History

Revision 4; Editorially changed term "Check Request" to "Payment Request," updating content to current payment tool terminology; April 27, 2010.

Revision 4; Editorially changed to update format, owner, and officer updated; August 17, 2009.

Revision 4; Effective March 11, 2002.

Outdated