

**Policy 3-111: Contracts with Individuals and Other Legal Entities**

**Revision #5.** Effective date: March 8, 2011.

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**I. Purpose and Scope**

A. Purpose.

To outline University policy governing agreements for the services of Independent Contractors.

To describe the requirements for classification as an Independent Contractor.

To describe the process under which campus units may engage Independent Contractors, including those circumstances under which campus units must involve Procurement & Contracting Services.

## B. Scope

This policy does not apply to arrangements with Independent Contractors otherwise covered by University policy, including:

1. Services of building or general contractors, architects, engineers and design consultants for construction projects, pursuant to Policy 3-101.
2. Payments to faculty (regular or auxiliary, including adjunct faculty), who would always fall under the employee category, pursuant to Policy 5-001.
3. Payments made to individuals for incidental services provided, such as blood donations, experimental tests and/or samples, etc.
4. Honorarium payments in accordance with Policy 3-062.

## II. Definitions

The following definitions apply for the limited purposes of this policy and any associated regulations.

- A. "Independent Contractor" - An individual who satisfies the Independent Contractor classification criteria set forth in this Policy, or other legal entity performing work or services for the University.
- B. "Significant Transaction" - Service contracts with individuals and other legal entities for larger dollar amounts requiring additional reviews and/or approvals. This threshold amount will always be consistent with the competition limits established for the selection of architects and engineers by the University of Utah and the State of Utah. [Refer to current threshold amount.](#)

## III. Policy

A. General

1. The use of consulting and professional service agreements under this Policy 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. Engagements of this type are typically finite in length rather than continuously renewed. For continuously renewed engagements, consult the Office of General Counsel.
  - a. 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.
  - b. A business operated by an employee of the University may be engaged as an Independent Contractor only if the contract services to be performed:
    - i. are not within the normal performance expectations of the employee's University position;
    - ii. 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;
    - iii. do not involve a conflict of interest prohibited by the Utah Public Officers' and Employees' Ethics Act or University Policy (see Policy 1-006);
    - iv. 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 department or other operating unit as the Independent Contractor; and
    - v. the employee would otherwise qualify as an Independent Contractor under this Policy based upon the nature of the work to be performed.

- c. Although a business operated by an employee that meets all of these criteria may be paid as an Independent Contractor, no University employee may receive compensation from the University for work performed for the University other than as an employee - through payroll.
  - d. Any agreement for the services of an Independent Contractor covered by this Policy shall comply with the contracting requirements set forth at Section III.C., below.
  - e. An Independent Contractor is not permitted to hire employees of the University to perform services covered by the agreement.
- B. Contracting requirements for Independent Contractors:
- 1. Due to the specialized and unique nature of the services performed, the selection of Independent Contractors will generally be done on an informal basis and without competitive bids or proposals. However, any “significant transaction”, or other significant commitment of University resources, must be approved by the Director of Procurement & Contracting Services and/or Office of General Counsel, unless otherwise approved by the cognizant vice president or the Office of Sponsored Projects.
  - 2. Except as otherwise exempted from this Policy, all contracts with Independent Contractors must be in a form approved by the Director of Procurement & Contracting Services or the Office of General Counsel. The University's Independent Contractor Services Agreement is an approved form of agreement for consulting and professional services, except for those categories identified at Sections III.D. and E., below.
  - 3. Contracts with Independent Contractors for medical, legal, accounting, and other unique professional services, and all Independent Contractor contracts using a form other than the University's Independent Contractor Services Agreement referenced at Section III.B.2, above, must have the approval of the Director of Procurement & Contracting Services and/or the Office of General Counsel.

4. All contracts with Independent Contractors must be signed in compliance with Policy 3-004 regarding Processing and Signing of Official Documents.
  5. A purchase order shall not be used in lieu of an Agreement as a means of securing and paying compensation for the services of an Independent Contractor.
  6. An honorarium payment shall not be used in lieu of an Agreement as a means of paying for services to the University. (See Policy 3-062.)
  7. Contracts for small dollar transactions and occasional services where an Independent Contractor is engaged for periods of less than one month and for an amount less than \$1,000 are exempted from any requirement under Sections III.C.1., and III.C.2. to provide Accounts Payable or Tax Services evidence to support an Independent Contractor classification.
- C. Additional Requirements When Contracting with Individuals as Independent Contractors
1. The University complies with federal and state laws and regulations on Independent Contractor classification and related requirements. If a University department engages an individual or sole proprietorship (rather than a corporation or other legal entity that is not a sole proprietorship) to perform services as an Independent Contractor, the department must supply the necessary evidence to support this classification over the presumption of employee classification. The Tax Services Office is the final arbiter of classification status.
  2. An individual may be retained as an Independent Contractor only if a determination has been made in accordance with this Policy that the individual qualifies as an Independent Contractor. Independent contractor classification is subject to compliance with Internal Revenue Service guidelines. A determination of Independent Contractor status must be completed prior to any engagement for services and before payments can be made - by completing the Employee/Independent Contractor Classification

Checklist, (“the Checklist”) and following the conclusions of the Checklist. The Checklist may change from time to time based on changing Internal Revenue Service guidelines. The Checklist must be completed by an individual with firsthand knowledge of the nature of the services to be performed and signed by the appropriate Account Executive. Questions regarding interpretation of the Checklist should be directed to Tax Services.

3. If a determination is made that a person previously classified as an Independent Contractor should have been paid as an employee - through payroll, the department will be responsible for any employment taxes, penalties and interest, and appropriate administrative costs. Further, the department may be required to retroactively award certain benefits such as retirement contributions, workers compensation, or other employee benefits consistent with payment as an employee - through payroll.
4. An Independent Contractor shall not be used to direct or carry out any major portion of an academic or research program. Only University employees may direct a continuing academic or research program.
5. Independent contractors are not employees, by definition, and are not entitled to employee benefits. They must be described or recognized as "Consultants or Independent Contractors" in published reports or other documents relating to the services covered by the agreement.

#### D. Requirements for Guest Lecturers and Performers

1. Except as otherwise exempted from this Policy, all contracts with guest lecturers and performers must be in a form approved by the University's Risk Manager or the Office of General Counsel. The University's Guest Lecturer/Performer Agreement form is an approved form of agreement for guest lecturers and performers.

#### E. Special Rules for Sponsored Projects

1. Before approval and signature under Section III.E.2 every agreement must be sent to the Office of Sponsored Projects for its review and approval to assure compliance with sponsor requirements.
2. The Vice President for Research, or Authorized Alternate (as defined in Policy 3-004), has final approval on Sponsored Research agreements, including the terms of the agreement (e.g., length, amount, or scope). Changes are not permitted without his/her prior written approval.
3. No federal employee may perform any work as or for an Independent Contractor in connection with a federal contract or grant without first obtaining the express written approval of the responsible federal contracting agency.

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*Parts V-VII of this Regulation are regulations resource information – the contents of which are not approved by the Academic Senate or Board of Trustees and are to be updated from time to time as determined appropriate by the cognizant Policy Officer and the Institutional Policy Committee, as per Policy 1-001 and Rule 1-001.*

#### **IV. Policies/ Rules, Procedures, Guidelines, Forms and other Related Resources**

- A. Policies/ Rules. [reserved]
- B. Procedures, Guidelines, and Forms.
  1. Employee/Independent Contractor Classification Checklist
  2. Guest Lecturer/Performer Agreement
- C. Other Related Resources.
  1. Independent Contractor Services Agreement Instructions (Includes embedded agreement)
  2. Significant Transactions
  3. Business Associate Agreement

#### 4. Buying & Payment Guide

### **V. References**

- A. Policy 1-006, Conflict of Interest
- B. Policy 3-004, Processing and Signing Official Documents
- C. Policy 3-062, Honorarium Payments
- D. Policy 3-101, Solicitations of Bids, Proposals and the Award of Procurement Contracts
- E. Policy 5-001, Personnel Definitions
- F. Policy 5-204, Remunerative Consultation and Other Employment Activities
- G. Policy 5-403, Additional Compensation and Overload Policy

### **VI. Contacts**

The designated contact officials for this regulation are

- A. Policy Owner(s) (primary contact person for questions and advice): Vice President for Financial and Business Services
- B. Policy Officer(s): Vice President for Administrative Services

See Rule 1-001 for information about the roles and authority of policy owners and policy officers.

### **VII. History**

- A. Current version. Revision 5.
  - 1. Effective March 8, 2011
  - 2. Legislative History Revision 5
  - 3. Editorial Revisions



- a. Editorially revised August 23, 2022 to move to current regulations template.
- B. Previous versions.
  - 1. Revision 4. Effective March 11, 2002
- C. Renumbering
  - 1. Renumbered from Policy and Procedures Manual 4-14