

COLORADO STATE UNIVERSITY - PUEBLO PURCHASING MANUAL

I. PURPOSE

The purpose of this section is to outline policies and procedures concerning the justification for and selection of certain service providers for all University work, and the documentation and procedures for initiating payment for the services rendered.

II. SCOPE

Further all personal services types contract must be according to University Purchasing Rules and State of Colorado Rules and Regulations. Please contact Procurement Services for furthering formation and/or proper procedure.

All personal service type transactions must be processed through Procurement Services. Contact Procurement Services in regards to selection procedures and documentation required for services for all funds.

An important purpose of this procedure is to assist personnel in correctly classifying workers as independent contractors or employees.

The correct classification is important to the University, misclassification of employees as independent contractors can result in a liability to the institution for income tax withholding not collected and for penalties associated with misclassification.

The issue of how a worker is classified is of interest to the workers as well, it affects the determination that a liability for estimated tax and self-employment tax and the treatment of certain business expenses.

II. SCOPE

For purposes of this instruction:

A. Independent Contractors may provide services in research, academic, technical, or management areas. When this service is provided in connection with a contract or grant it must not be available from those University employees whose direct salaries are provided by contract or grant.

B. Independent Contractors will be considered to include the independent gathering of data; special problem analysis; providing professional recommendations in a highly technical area of competence; providing assistance with project implementation or documentation; etc.

III. DEFINITIONS

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For purposes of this instruction:

- A. The terms “consultant,” “personal service provider,” and “independent contractor” are synonymous.

- B. An “independent contractor” is defined as a firm or individual who is responsible to the University for the results of certain professional or highly technical advice or assistance, including production of typing or documents, under terms of an engagement but is not subject to the University’s control as to the means and methods of accomplishing those results. Further, and “independent contractor” generally:
 - 1. has a place of business and a business listing in a directory when the services are offered to the public;
 - 2. selects his/her own clients and is free to work for one or more during any given interval;
 - 3. determines the time and place work will be performed;
 - 4. provides the tools and materials needed to perform the work;
 - 5. does not participate directly or indirectly in benefit programs of the University; for example, the individual is not covered by the University for Worker’s Compensation covering injury to the worker, for public liability covering injury to others, or for unemployment compensation;
 - 6. may agree to perform specific services for a fixed price and generally does not receive regular amounts at stated intervals.

- C. Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work, but also as to details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but as to how it shall be done.

The presence of the following factors, provided by federal tax regulations, tends to indicate that a worker is an “employee:”

- 1. the worker complies with the employer’s instructions about the work, or employer has the RIGHT to require compliance;

- 2. the worker receives training from or at the direction of the employer;

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3. the worker provides services that are integrated into the business of the employer;
 4. the worker provides services that must be rendered personally (as in the example of hiring a particular actor or other well-known or specially talented individual);
 5. the employer hires, supervises, and pays assistants for the worker;
 6. the worker has a continuing working relationship with the employer;
 7. the worker must follow set hours of work;
 8. the worker works full time for the employer;
 9. the worker does work on the employers premises;
 10. the worker does work in the sequence set by the employer;
 11. the worker must submit regular reports to the employer;
 12. the worker receives payments from the employer for business or traveling expenses;
 13. the worker receives payments of regular amounts at set intervals from the employer;
 14. the worker relies on the employer to furnish tools and materials;
 15. the worker lacks a major investment in facilities used to perform services;
 16. the worker cannot make a profit or suffer a loss from services (in addition to the profit or loss ordinarily realized by employees);
 17. the worker works for only one employer at a time;
 18. the worker does not offer services to the general public;
 19. the worker can be fired by the employer; and
 20. the worker may quit work at any time without incurring liability.
- D. The Internal Revenue Service will not allow the “formal” aspects of an arrangement designed to achieve a particular status (that is, employee or independent contractor) to obscure the underlying substance of the arrangement.

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The degree of importance by the IRS to each factor found in the above definition varies depending on the occupation and the factual context in which the services are performed. There is no required number of factors or combination of factors that will automatically assure employee or independent contractor status for tax purposes.

While the definitions provided in this instruction for employee and independent contractor are highly subjective, they are the best guidelines available for making the determination of a worker's status, and the University will apply them in making such determinations.

IV. POLICY

- A. The use of an independent contractor 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. Selection of an independent contractor shall be made on the basis of qualifications, resources, experience, cost and needs to the University.
- B. An individual who performs personal services but is subject to University supervision will be construed as a University employee and not a consultant as intended by this procedure. Services of employees should normally be reflected and reimbursed through the payroll system. Services in excess of the employee's normal duties may be reimbursed through a supplemental contract under supplemental pay procedures subject to the University's Human Resources Policies and Procedures.
- C. If a worker is reclassified by the IRS as an employee, the University could be liable for the amount of the income taxes that it failed to withhold, fringe benefits, and both the University's and employee's shares of PERA associated with that employee's compensation.
- D. An additional important result of the worker classification exercise is that the University has a third party liability for the acts of its employees, whereas an independent contractor is liable for his or her own actions.

V. PROCEDURES

- A. Personal Services authorization. Prior to initiating an agreement for personal services the following action should be taken:
 - 1. For academic or administrative independent contractors. If an academic administrative independent contractor (including a guest lecturer, an unsupervised director of a seminar or workshop, curriculum consultant, etc.) is required, the requiring individual should secure prior approval from the department head or next higher supervisor. Always contact Procurement Services for direction and guidance.

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- B. Selection of independent contractors. Selection and documentation supporting the hiring of an independent contractor for any project should, as a minimum, include the provision of the following:
1. Evidence that an effective process has been employed to secure the most qualified individual available, considering the nature and extent of the services required; and
 2. Evidence that the fee is appropriate considering the qualifications of the contractor, his/her normal charges, and the nature of the services to be provided.
- C. Arranging terms with the contractor.
1. General. Prior to hiring a contractor, there should be written evidence of agreement between the University and the contractor which includes the following items as applicable.
 - a. Statement of work; time schedules and any reporting requirements.
 - b. Limits of University's and contractor's liability.
 - c. Rate of compensation, maximum dollar amount, and frequency of payment.
 - d. Reference to responsibilities of the contractor regarding access to information developed during the engagement; rights to discoveries, inventions, or patents; conflicts of interest, etc.
 - e. Reference to reimbursement for travel expenses.
- D. Documentation and reimbursement.
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 - a. Purchase Order. All Personal Services under \$10,000, require a Purchase Order with a complete scope of work attached outlining vendor services.
 - b. Independent Contractor Agreement. If the personal services will cost \$10,000 or more, a risk assessment must be made determining whether the agreement should be formalized by use of the Independent Contractor Agreement. The Agreement should be signed by the authorized department head or next higher supervisor in the "Department Head" space. The Procurement Services Director will sign for the Board of Governors (BOG) for contracts up to \$50,000. The University President will sign for the Board of Governors for any contract greater than \$50,000.
 - c. Reimbursement.

For payment the department should forward to Accounts Payable an invoice from the vendor indicating services have been performed.