

COLORADO STATE UNIVERSITY-PUEBLO
Financial Procedure Instructions
FPI 2-19

1. **Procedure Title:** Independent Contractor Procedures
2. **Procedure Purpose and Effect:** To provide a guideline for determining payment for services as an independent contractor or employee.
3. **Application of Procedure:** This procedure applies to all departments.
4. **Exemption:** None.
5. **Definitions:**
 - a. **Consultant:** An Independent Contractor who provides professional advice or services in one or more specialized areas of knowledge. A consultant will usually have a particular skill or expertise not available within CSU-Pueblo, and the need for their services commonly does not extend beyond a limited period of time to complete a specifically defined project. Consultants are usually paid by the project, not by rate and time (e.g. dollars per hour or per month).
 - b. **Employee:** An individual who performs services for the University, if the University has the right to control and direct the individual in regard to the result to be accomplished and the process by which the result is accomplished. Any person who performs services for CSU-Pueblo who is not an Independent Contractor, as defined herein, is an employee.
 - c. **Independent Contractor:** An individual or business entity who renders a service to CSU-Pueblo under the conditions established by the IRS for independent contractors. They typically have a separate workplace, are not supervised, and have a particular set of skills not available elsewhere within the organization. They are not entitled to employee benefits, are not covered by worker's compensation, and their pay is usually not subject to income tax withholding.
6. **Basis for Determination of Employee vs. Independent Contractor:**

A worker is an employee, not an independent contractor, if an employer/employee relationship exists. Such a relationship exists if CSU-Pueblo has the right to direct and control the worker, both as to the final result and the details of when, where, and how the work is to be done.

The IRS provides common factors that it takes into account in deciding whether an employer's control over an individual is sufficient to establish an employer/employee relationship.

Based on the IRS' listed factors, CSU-Pueblo typically expects an individual or firm* performing services for the University to be an independent contractor, not an employee, when the following conditions are met:

- a. The contractor is not a current CSU-Pueblo employee, and is engaged in an independently established trade, occupation, profession or business that makes the same services available to other clients and businesses on a regular and consistent basis.
- b. The contractor is not a current employee of CSU-Pueblo and was not an employee in the last six months providing a related service.
- c. The contractor is providing services which are not similar to those currently being provided or which can be provided by any CSU-Pueblo employee(s).
- d. The contractor is providing services that are not performed on a full time, regularly occurring, or continuing basis at CSU-Pueblo.
- e. The contractor is free from CSU-Pueblo's control or direction in the performance of the service. CSU-Pueblo has the right to control only the outcome, while the individual will be responsible for determining means and methods used to perform services. This does not mean that CSU-Pueblo cannot specify, by contract, the applicable requirements, specifications, or standards required; it means that the contractor independently determines how to perform the work accordingly.
- f. The contractor is paid on the basis of a completed project or on a basis consistent with other independent contractors in the same trade, occupation, profession or business (based on a quote or offer approved by CSU-Pueblo as part of the procurement and contracting process).
- g. The contractor, not CSU-Pueblo, will determine the amount of effort and hours of work, to accomplish the required services within a stated time-frame.
- h. The contractor is responsible for furnishing the knowledge, supplies, equipment and/or tools necessary to perform the service, responsible for covering the expenses associated with the service, and entitled to the resulting profit or loss.
- i. The contractor will receive no training, supervision, or instruction from CSU-Pueblo, other than conveying the scope of services desired.

Although most worker arrangements can be properly classified based on the above prerequisites, there are some situations in which all of these conditions are not met, or the correct classification is not readily apparent. In these cases it will be necessary to further review the nature of the arrangement. This review involves evaluating many different aspects of both the worker and the work to be performed, which, when taken as a whole, will determine the correct classification of the worker.

The penalties for incorrectly classifying employees as independent contractors are significant. If a worker paid as an independent contractor is reclassified by the IRS as an employee, the University will be liable for the amount of the federal income taxes it failed to withhold, together with both the employer's and employee's share of FICA taxes associated with that employee's compensation, and, in some cases, for penalties. In addition, CSU-Pueblo may be liable for the worker's injuries or damages, and other penalties, for failing to provide worker's compensation coverage, and both the University and the worker are placed at risk with respect to liability to third parties.

Department heads are responsible for making an initial assessment of the employment status for any individuals they hire; department staff are encouraged to contact Procurement Services with specific questions prior to finalizing arrangements with the individual. A determination as to the status of the individual must be finalized prior to any work being performed. If an employer/employee relationship is found to exist between the worker and the University, the worker must be considered an employee, all applicable hiring processes must be followed, and payments for services are handled through the

payroll system with applicable taxes withheld. If the individual is an independent contractor, payments for services are handled through Accounts Payable.

Misclassifying an individual as an independent contractor when in fact the relationship is one of employer-employee is a serious matter for the University as hiring practices are highly regulated by federal and state laws.

7. Guidelines to Use When Hiring an Independent Contractor

The hiring of an independent contractor or consultant should be based upon a selection process that attempts to secure the most qualified individual for the assignment. Compensation should be appropriate for the type of advice or service provided and should reflect the skills and qualifications of the individual or firm selected to perform the service.

In the case of an independent contractor who performs services funded from a sponsored project account, departments must also comply with any limitations imposed by the sponsoring agency on either the rate that may be paid to consultants or the amount of travel and related expense reimbursement. It is advisable to discuss each situation with Sponsored Programs and to carefully review the sponsor's program literature when preparing a grant proposal or hiring an independent contractor or consultant.

8. Procedures for Retaining an Independent Contractor

Before retaining the services of an independent contractor, the University employee(s) responsible for the transaction must follow all applicable procurement and contracting procedures. This includes submitting a Purchase Requisition, using a standard form University Contract, obtaining proof of insurance and other required documentation from the contractor, and having the contract fully approved by the responsible administrators. For assistance with these requirements, contact the Department of Procurement Services.

Failure to follow these procedures can result in non-payment to the contractor and, in some cases, personal liability of the CSU-Pueblo employees responsible for incurring the unauthorized obligation.

9. References & Cross-References:

- a. IRS website <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Independent-Contractor-Self-Employed-or-Employee>
- b. IRS Form SS-8

10. Forms & Tools:

- a. Employee vs. Independent Contractor Form_ <https://www.csupueblo.edu/purchasing/procurement-services/contract-forms.html>

*Existence of a separate business entity is not always determinative of independent contractor status. A University employee who incorporates in order to be able to provide the University with services that are similar or related to the person's job duties, or that would be considered employment if provided by the individual in his or her own name, will not be classified as an independent contractor solely on the basis of having incorporated.