



# University of California Business and Finance Bulletin

Office of the Executive Vice  
President, Business Operations

December 18, 2008

**Number  
BUS-34**

**Securing the Services of Independent Consultants**

*<http://www.ucop.edu/ucophome/policies/bfb/bus34.html>*

Refer all general questions to:  
Lesley.Clark@ucop.edu

Refer all campus questions to:  
Campus Business Contracts Office

**Business and Finance Bulletins Home Page:** <http://www.ucop.edu/ucophome/policies/bfb/>

### Table of Contents

I	References	1
II.	Definitions	2
III.	Responsibilities	4
IV.	Scope	5
V.	General Requirements	6
VI.	Requests and Approval	9
VII.	Agreement Covering Services	11
VIII.	Payment for Services of Independent Consultant	12
IX.	Reporting	12
Appendix 1	Independent Consultant Agreement (Required Form)	13
Appendix 2	Amendment to Independent Consultant Agreement	13
Appendix 3	Independent Contractor Pre-Hire Worksheet and IRS Classification Factors	13

#### I. REFERENCES

- A. University of California Academic Personnel Manual, [Section 664](#).
- B. Business and Finance Bulletin [RMP-8](#), Legal Requirements on Privacy of and Access to Information.
- C. Business and Finance Bulletin [BUS-43](#), Materiel Management.
- D. Business and Finance Bulletin [BUS-63](#), Insurance Requirements/Certificates of Insurance.
- E. Business and Finance Bulletin [BUS-76](#), Engagements with The Regents' Audit Firm.

- F. Business and Finance Bulletin [BUS-77](#), Independent Contractor Guidelines.
- G. Memorandum, Vice President Kleingartner to Chancellors, Laboratory Directors, Vice President Kendrick, Executive Assistant Wilson, Recording of Discussions with Employees, March 20, 1981.
- H. Policy to Ensure Equal Opportunity in University Business Contracting, January 1, 1996.
- I. University of California Interim Administrative Guidelines to Ensure Equal Opportunity in University Business Contracting, January 1, 1996.

## II. DEFINITIONS

Certain terms appear frequently throughout this and other University purchasing policy issuances and have the following meanings:

- A. Employee - any individual who is presently employed by the University.
- B. Employer-Employee Relationship - Generally, under common law if an employer has the right to direct and control the work of an individual who performs the services, not only as to the results to be accomplished but also as to the methods and means by which the results are accomplished, an employer-employee relationship exists. In this respect, even if the employer does not exercise the right to direct or control the manner in which the worker performs the services, the fact that the employer retains the right to do so is sufficient.

On the other hand, if the individual is subject to the direction or control of another person only as to the end result, not as to the methods and means used to accomplish that result, the individual is not an employee. If the employer does not control either the manner of performance or the result of the service, an independent consultant relationship exists.

Because there are no explicit statutory standards for determining a worker's status under the employment tax laws, the IRS has identified twenty classification factors based on common law standards that can be used to determine whether the employer has the right to direct and control the detail and means of a worker's duties. The fact that more than half of the factors may point to one result does not necessarily mean that this is the correct determination; rather, all of the facts must be analyzed to determine whether certain factors may be more important than others under the particular circumstances. In addition, the fact that an individual's relationship with a business is temporary should be given little weight in making an employee/ independent consultant determination. Although an independent consultant will typically have a temporary relationship with a business, so too will employees engaged on a seasonal project, or on an "as needed" basis.

- C. See Appendix 3, Independent Contractor Pre-Hire Worksheet, and Business and Finance Bulletin BUS 77 for information on the application of the twenty IRS factors and a more extensive discussion of employer/employee relationships.
- D. Employee-Vendor Relationship - a relationship in which:
1. An employee, acting alone, proposes for a consideration to provide services to a University department, or an employee owns or controls more than 10% interest in any business which proposes for a consideration to provide services to a University department; or
  2. A near relative of an employee, acting alone, proposes for a consideration to provide services to a University department, or a near relative of an employee owns or controls more than 10% interest in any business which proposes for a consideration to provide services to a University department, and the employee has, in any connection with his or her University employment, any responsibility for, or will be involved in any manner in, the departmental decision to accomplish or approve the agreement.
- E. Executing Officials - officials who are designated as Program Review Officials and Responsible Administrative Officials.
- F. Independent Consultant - An independent consultant is an individual not employed by the University of proven professional or technical competence who provides primarily professional or technical advice to the University and the University does not control either the manner of performance or the result of the service.

The University document used to secure the services of an independent consultant is an Independent Consultant Agreement form. A purchase order or employment type document may not be used.

- G. Independent Consultant Agreement - a contract for services which are of an advisory nature, provide a recommended course of action or personal expertise, have an end product which is basically a transmittal of information either written or verbal, and which is related to University administration and management.
- H. Independent Contractor

An independent contractor relationship exists when the University has the right to control only the result of the service, not the manner of performance. Independent consultants are a special type of independent contractor and for University purposes are treated somewhat differently than non-consultant independent contractors.

- I. As related to independent contractors, service is useful labor performed for another that may or may not produce a tangible commodity. Service includes, but is not limited to: bookstore operation; use of security guards; transportation; computer programming; clothing rental and cleaning; laundry; tests and analysis; film processing; janitorial work; window washing; rubbish and waste removal; and service and repairs to office equipment, transportation equipment, laboratory and medical equipment, and musical instruments.

In general, such service is covered by the University's standard purchase order form and terms and conditions of purchase in accordance with the procedures described in Business and Finance Bulletin BUS 43.

The University document used to execute this type of relationship is a purchase requisition/contract/order form. Neither the Independent Consultant Agreement form nor an employment type form shall be used.

- J. Near Relative - a spouse, child, parent, brother, sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, sister-in-law, and step-relatives in the same relationship.
- K. Program Review Official - a Chancellor, Vice President, or person or persons designated by each to approve the purpose and contents of an independent consultant agreement; one of two executing officials.
- L. Reasonable Payment - a payment that does not exceed that which would be incurred by a prudent person in the conduct of a competitive business. Reasonable payment can be established by market test, price or cost analysis, or the experience and judgment of the Responsible Administrative Official. Such a judgment considers total value to the University. There is value to the University in agreements which meet the University's needs, such as those involving qualifications, experience, resources, quality, and service. A reasonable payment need not be the lowest price available, but is one which offers the highest total value to the University.
- M. Responsible Administrative Official - an official designated by a Chancellor or a Vice President to be responsible for overall administration of independent consultant procedures and agreements; one of two executing officials.

### III. RESPONSIBILITIES

- A. Chancellors and Vice Presidents are responsible for assuring that the services of independent consultants are secured in accordance with the requirements of this Bulletin.
- B. The Chancellors and Vice Presidents or their designees may act as Program Review Officials in approving the purpose and contents of the independent consulting agreements by signing the agreements and any amendments.

C. Chancellors and Vice Presidents shall appoint a Responsible Administrative Official to have administrative responsibility for establishing and implementing procedures necessary to fulfill the requirements of this Bulletin in securing the services of independent consultants. This appointment and its related delegation shall be in writing. This Responsible Administrative Official specifically shall assure that:

1. all requisite documents have been fully approved and received;
2. sole source justification is documented if the agreement is \$50,000 or more and competitive proposals have not been solicited;
3. he or she has signed all agreements, including amendments;
4. adequate records are retained to document the transaction including, but not limited to:
  - a. the Independent Consultant Agreement and all amendments;
  - b. solicited proposals or sole source justification for all agreements in excess of \$50,000;
  - c. documentation that the price to be paid is reasonable; and
  - d. a completed and signed Independent Contractor Pre-Hire Worksheet
5. the annual report and statement (see IX., below) are prepared and submitted to the Vice President--Finance.

D. The appropriate accounting officer shall insure that no payment to an independent consultant is made prior to the signing of an agreement, unless expressly approved in writing by the Responsible Administrative Official and Program Review Official.

#### IV. SCOPE

- A. The requirements and procedures set forth in this Bulletin apply to securing the services of independent consultants for:
1. Campus activities for which administrative responsibility is vested in the Chancellor; and
  2. University activities for which administrative responsibility is vested in the Vice Presidents or as designated by the President.
- B. The administration and implementation of this Bulletin rest with the Chancellors and Vice Presidents.

- C. The requirements and procedures set forth in this Bulletin do not apply to:
1. Appointment of consultants under the Standing Orders of The Regents, Section 100.4(y), covering the appointments of architects and engineers for approved projects;
  2. Appointment of consultants for the Lawrence Berkeley National Laboratory;
  3. University faculty members who serve internally as consultants, as covered in the Academic Personnel Manual Section 664;
  4. Engagements with The Regents' external audit firm, as covered in Business and Finance Bulletin BUS-76;
  5. Independent contractor relationships, as covered in Business and Finance Bulletin BUS-43; or
  6. Employer/employee relationships, as covered in the applicable personnel policies.

V. GENERAL REQUIREMENTS

- A. Arrangements to secure the services of an independent consultant may be entered into only when a determination has been made that the services are so urgent, special, temporary, or highly technical that they cannot be performed economically or satisfactorily by existing University staff during the course of their normal University responsibilities or duties.
- B. Generally, services of a specific professional or technical nature to be performed by an independent consultant would encompass activities other than those services provided by independent contractors as defined in II., above.
- C. The use of an independent consultant is expected to be infrequent and is primarily used to solve clearly-delineated problems.
- D. An independent consultant shall not be used to direct or carry out a major portion of a program.
- E. In general, the determination regarding employee versus independent consultant status is made by the Responsible Administrative Official. However, in cases where it is difficult to determine the correct status using the criteria provided in this bulletin and Business and Finance Bulletin BUS 77, the Human Resources Department or the Office of the President Payroll Coordination and Tax Services Office, in coordination with the General Counsel's Office and the University's outside tax counsel, can provide assistance in determining whether an employer-employee relationship exists. Only upon determination that no employer-

employee relationship would be established may the proposed agreement be executed.

- F. If it is determined that an employer-employee relationship would be established, the University location shall follow the normal employment process.
- G. If it is determined that an employee-vendor relationship would be established, the requirements of this section G. shall be followed:

- 1. Basic Policies

- a. Separation of Interests - It is the policy of the University to separate an employee's University and private interests, and to safeguard the University and its employees against charges of favoritism in the acquisition of goods, materials, and services.
- b. Conflict of Interest - The State of California Political Reform Act prohibits an employee from making or participating in the making of a decision if there exists a financial conflict of interest. Requirements governing such decision making are set forth in the University's Conflict of Interest Code and shall be observed by the University in contracting for consulting services.
- c. Exceptions/Approvals - No contract for consulting services shall be made with any employee-vendor as defined in I.I.C. above unless there has been a specific determination by the Responsible Administrative Official that the goods or services are not available either from commercial sources or from the University's own facilities. The Responsible Administrative Official is delegated authority, within constraints imposed by the Political Reform Act, for approving an employee-vendor contract only in exceptional cases when there are unusual or extenuating circumstances.
- d. Inspection - The Responsible Administrative Official, whenever necessary to ensure an understanding of facts presented, shall inspect the business premises and records of an employee-vendor from whom the University is considering acquiring consulting services.

- 2. Required Reports

- a. Circumstances Requiring a Report - A University employee or near relative shall submit a report conforming to the requirements of V.F.2.b. and c., below, when making a proposal, or upon being informed that an employee-vendor relationship exists.
- b. Content and Certification - The employee or near relative submitting the required report shall:

1. Indicate the University department(s) and position(s) of the employee involved in the employee-vendor relationship.
  2. Disclose the interest of the employee or near relative in the proposal.
  3. Specify the employee's and/or near relative's relationship to, or interest in, any business organization making the proposal.
  4. Indicate whether the employee has any responsibility for or will be involved in any manner in the departmental decision to accomplish or approve the agreement.
  5. Certify that no University time, material, equipment, or facilities, other than those specified in the Independent Consultant Agreement, have been or will be used in connection with any resulting consulting agreement.
- c. Submission - The required report shall be submitted to the Responsible Administrative Official.
- H. The copyright and copyright rights to any published report or other materials produced by an independent consultant shall belong to the University, as set forth in the Independent Consultant Agreement Terms and Conditions, Article X.; however, the independent consultant may be listed as a "consultant" in any published report or other materials.
- I. An independent consultant shall not hire any employee of the University to perform any service covered by the agreement. If the work is to be performed in connection with a federal contract or grant, an independent consultant shall not hire any employee of the U.S. Government to perform any service covered by the agreement.
- J. The consultant shall not be in a reporting relationship to a University employee who is a near relative, nor shall the near relative be in a decision-making position with respect to the consultant.
- K. The consultant shall affirm that, to the best of his or her knowledge, there exists no actual or potential conflict between the consultant's family, business, or financial interests and the services provided. Any question regarding possible conflict of interest shall be raised with the University.
- L. The laws and regulations affecting the University of California Retirement Plan (UCRP) and the Public Employees' Retirement System (PERS) do not prohibit a retired member of UCRP or PERS from providing services to the University as an independent consultant except that a person who retired under the Voluntary Early Retirement Incentive Program (VERIP) is subject to specified limitations.

The Responsible Administrative Official should determine a retiree's status and limitations, if any, prior to executing the Consulting Agreement.

## VI. REQUESTS AND APPROVAL

- A. Prior to preparation of proposals, a requesting unit shall make a written presentation of its requirement for the services of an independent consultant and submit it to the Program Review Official. The request for consultant service shall be in a form which will clarify and define the problem for the benefit of the Responsible Administrative Official and the Program Review Official, and which will enable prospective independent consultants to prepare proposals. The Program Review Official shall approve the request to proceed with the preparation of proposals.
- B. The request for consultant service shall include, but not necessarily be limited to, the following:
  - 1. A description of the problem;
  - 2. The objectives of the study or a general statement of what is expected to be accomplished;
  - 3. An explanation of why the service cannot be performed by University employees;
  - 4. The scope of the work, including any desired approach to the problem, specific limitations, questions requiring answers, format for the completed report, and the extent to which assistance, resources and cooperation from the University will be available to the consultant;
  - 5. If the services are to be performed in connection with a contract or grant, pertinent extracts of such contract or grant shall be attached and the conditions set forth therein shall be considered a part of the request for consultant service;
  - 6. A firm or estimated time schedule including dates for commencement of performance, submission of progress reports, and for completion of the service;
  - 7. The terms under which progress payments will be allowed;
  - 8. Account(s) and fund(s) and subaccount(s) to be charged; and
  - 9. A completed Independent Contractor Pre-Hire Worksheet (Appendix 3)
- C. Proposals from independent consultants shall be in writing and shall include, but not necessarily be limited to, the following:

1. A description of the consultant's qualifications, with a brief list of similar types of consulting contracts successfully concluded, a sample of such work when appropriate, and a description of the lead personnel and anticipated supporting personnel to be employed on the study;
  2. An overall description of the techniques by which the consultant intends to approach the problem, consultant resources to be expended, the anticipated beginning and ending dates for the services, equipment and facilities to be utilized and, if subcontractors are contemplated, a description of these persons or firms and the portions and monetary percentages of the work to be done by them;
  3. A description of the type of information, if any, to be collected about an individual, the method of collection, the physical type of the resulting record, i.e., typed or written notes, tape recording, photograph, and the proposed ownership of such records. The department proposing to engage a consultant shall be guided by Business and Finance Bulletin RMP-8 (Legal Requirements of Privacy of and Access to Information). Tape recorders shall not be used during discussions with University staff, or their agents, pertaining to employment matters except as specified by the document referenced in I.G. of this bulletin; any such use shall be specified in Article I.H. of the Independent Consultant Agreement (see Appendix 1). The consultant's attention shall be directed especially to Articles XII and XIII of the Independent Consultant Agreement (see Appendix 1);
  4. The total cost of the study and a breakdown of how this cost was computed, including any travel expenses, and desired method of payment;
  5. The total dollar amount of consultant work contracted with the University of California in the last 12 months;
  6. The name and University of California position of any officer, faculty member, or other employee of the University who holds a position of director, officer, partner, trustee, manager, or employee in the consultant organization, as well as the names of any near relatives who are employed by the University; and
  7. If the consultant is not a citizen of the United States, an explanation of the person's alien status in the United States.
- D. If the total amount of the contract of the independent consultant agreement is or will be \$50,000 or more, the Responsible Administrative Official shall assure that, if possible, proposals are solicited from three or more qualified independent consultants. When competitive proposals are not solicited, the reason for not seeking competition shall be documented and retained in the agreement file and the Responsible Administrative Official shall determine the payment is reasonable

for the services to be performed. Reasonable payment is defined in II.H., above. The scope of the agreement shall not be artificially divided so as to avoid the solicitation of competitive proposals.

- E. If the amount is less than \$50,000, the Responsible Administrative Official shall determine that the payment is reasonable for the services to be performed.
- F. Selection of the independent consultant shall be made on the basis of qualifications, resources, experience, needs of the University, and cost to the University. In the selection process, any University officer or employee participating in the decision must keep in mind the disqualification requirements for financial conflict of interest of the State of California Political Reform Act of 1974. Officers and employees shall not make or participate in the making of a University decision if there is a financial conflict of interest. Questions concerning conflicts of interest and the University's disqualification requirements should be raised with the local Conflict of Interest Coordinator.

## VII. AGREEMENT COVERING SERVICES

- A. The agreement between the University and an independent consultant shall be executed on the standard University of California Independent Consultant Agreement, Appendix 1 of this Bulletin. Any modification of the standard agreement form or material modification of the approved scope of services shall be reviewed and approved by the Responsible Administrative Official, who shall consult with the General Counsel or Vice President--Finance as appropriate.
- B. The insurance requirements to be provided under Article XI.2. of the Independent Consultant Agreement shall be those set forth in Business and Finance Bulletin BUS-63, Section IV.B.2.c., IV.D., and V.A.2. Exceptions to the insurance limit requirements outlined in this section may be developed by Campus Risk Managers, in conjunction with responsible campus administrators, following risk identification and evaluation. In such situations, it may be determined that little or no risk is involved, in which case the limits may be lowered or the requirement eliminated. Conversely, it may be determined that additional risk is involved, in which case the limits may be raised.
- C. The agreement between the University and an independent consultant shall be signed by the consultant, by the Responsible Administrative Official, and by the Program Review Official prior to the beginning of any service. Exception after the fact may only be granted by written approval of the Program Review Official.
- D. There shall be no extension of the termination date or expansion of the scope of the original agreement or payment thereof without prior written approval by the Responsible Administrative Official and Program Review Official (see Appendix 2 for sample format for amendment). Amendments may not be issued for work unrelated to the scope of the original agreement.

## VIII. PAYMENT FOR SERVICES OF INDEPENDENT CONSULTANT

- A. A consultant normally shall submit an invoice setting forth the appropriate charges and indicating the agreement number and taxpayer reporting number. An invoice need not be submitted if exempted by terms of the agreement.
- B. Authorization for consultant payments shall be a copy of the properly executed standard agreement form.
- C. Payment shall not be made for services rendered prior to the contract period, except as expressly approved by the Responsible Administrative Official and Program Review Official, nor shall payment be made for services rendered after expiration of the agreement.
- D. Payment shall be made in accordance with the schedule set forth in Section III. of the agreement. In case of termination prior to completion of the work to be performed under the agreement, a determination shall be made of an equitable compensation to be paid for the work completed based on its value to the University, provided that such compensation shall in no event exceed the total agreement price.
- E. If a consultant is not a citizen of the United States, University procedures regarding payments to aliens shall be followed.

## IX. REPORTING

The Responsible Administrative Official shall submit an annual report to the Vice President--Finance. The report shall include a statement indicating compliance with the provisions of this Bulletin and a list of all agreements and amendments executed in the reporting period. The report shall include, as a minimum, the following information for each executed agreement or amendment:

A listing of each agreement and amendment executed in the reporting period;

The name of the consultant;

The purpose of the consulting services;

The total dollar amount of the agreements and amendments executed during the reporting period (not expenditures made in the reporting period);

The total dollar amount and percentage of consulting services placed with small (SBE), disadvantaged (DBE), women-owned (WBE), or disabled veteran (DVBE) business enterprises.

- [Appendix 1](#) -- Independent Consultant Agreement (Required Form)
- [Appendix 2](#) -- Amendment to Independent Consultant Agreement (Sample Form)
- [Appendix 3](#) -- Independent Contractor Pre-Hire Worksheet and IRS Classification Factors