Hiring an Independent Contractor

An independent contractor (IC) is a specific type of vendor. In order to contract with them, they must meet IRS tests and University policy. The IRS tests for IC include limited behavior and financial control over an independent contractor; therefore, the scope of work, the deliverables, and payment schedule must be clear and specific.

- Independent contractors are individuals. If a company has employees they do not qualify as an independent contractor. Some sole proprietor companies have no employees and would be established as an independent contractor.
- There are specific IRS and UC guidelines for hiring an independent contractor. The Pre-Hire Worksheet helps to make the determination. It must be completed for each new contract even when you have used the contractor previously. For more information refer to the IRS guidelines on their website: IRS Website
- An independent contractor relationship exists when the University has the right to control only the result of the service, not the manner of performance.

Documents:
Submit all documents listed below to Stephanie Gangl, Sr. HR Generalist, for review a minimum of two weeks prior to the desired start date. After review and approval the request will be sent to purchasing to establish the PO and execute the Purchasing Agreement. The review must be completed and the Purchasing Agreement must be written and signed prior to the contractor beginning any work.

<table>
<thead>
<tr>
<th>Document</th>
<th>Who Completes</th>
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</thead>
<tbody>
<tr>
<td>Pre-Hire Worksheet – details the IRS factors</td>
<td>Requestor</td>
</tr>
<tr>
<td>Statement of Work – defines what the product is, who will evaluate it and the pay schedule</td>
<td>Requestor</td>
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<tr>
<td>Selection justification – describe why this vendor was selected and others were rejected</td>
<td>Requestor</td>
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<tr>
<td>After the Fact – must be completed if request is being made after the work is has been started. <em>Note: Payment requests made after the work has started may not be approved and the vendor may not be paid.</em></td>
<td>Requestor</td>
</tr>
<tr>
<td>Conflict of Interest – Identifies if IC is a current or prior employee or if they have a personal or financial connection to UC Berkeley</td>
<td>Independent Contractor</td>
</tr>
<tr>
<td>Proof of Liability Insurance – very specific coverage needed</td>
<td>Independent Contractor</td>
</tr>
<tr>
<td>Current resume/CV or website portfolio</td>
<td>Independent Contractor</td>
</tr>
<tr>
<td>Vendor Request form – for new vendors only</td>
<td>Independent Contractor</td>
</tr>
<tr>
<td>Purchasing Agreement – formal contract between UC Berkeley and the contractor. Will be written after Sr. HR Generalist review.</td>
<td>Purchasing</td>
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Applicable policies:
- Business & Finance Bulletin 43 & 34
- Business & Finance Bulletin 77 & 63
- PPSM policy 82 Conflict of Interest

Updated 12/23/2014
Finding Forms:
The forms are found on the Team 2/ ERSO website under Human Resources – Procedures and Forms.
The new vendor form and Welcome Packet can be found here:
http://procurement.berkeley.edu/programs/vending

Insurance Requirements:
All independent contractors are required to carry general or professional liability insurance. The minimum coverage amounts are listed below. Insurance must be obtained prior to any work starting. A contractor can work with their own insurance agent to obtain insurance coverage or use the UC Berkeley relationship with Marsh insurance.

- If the contractor works with their own agent the policy will generally cover them for any contracts that they make (with UCB or other clients.)
- If the contractor works with Marsh insurance the policy will only cover them for a specific contract.

Commercial General Liability Minimum Coverage
- $2MM Aggregate
- $1MM Each Occurrence
- $2MM Products & Completed Operations Aggregate
- $1MM Personal & Advertising Injury
- $100K Fire Damage (any one fire)
- $5K medical expense (any one person)

Commercial Auto Liability Minimum Coverage
- $1MM Combined Single Limit

Certificate Holder:
University of California – Berkeley
UC Regents
Attn: Team 2/ERSO Purchasing
1608 4th St. MC:7600
Berkeley, CA 94720

Document must state the UC Regents are additional insured

UC Berkeley – Through Marsh
Revising a contract:

When to contact Sr. HR Generalist: If there are changes to the Statement of Work (taking away deliverables or adding deliverables etc.) please forward the changes to Sr. HR Generalist for review. Sr. HR Generalist will review, coordinate with Purchasing, and advise if the new SOW still meets independent contractor guidelines and if this qualifies as a new contract or an amendment to the exiting Purchasing Agreement.

When to contact Purchasing: If the only changes are to the amount of money to be paid to the contractor work directly with Purchasing.

Payment to the Independent Contractor:

Requests for payment should be submitted to Accounts Payable. The invoice needs to reference the PO# and must already be approved. The New Vendor Welcome Packet contains the contact information for Accounts Payable and specific instructions for what information should be on the invoice to ensure prompt payment.

Frequently Asked Questions:

• Do I have to do all of this? The work is already done.
  Yes. Even if the work has already been done, the paperwork will still need to be completed. In addition, an After the Fact form must be submitted to explain why the campus policy was not followed. After the Fact processing doesn’t guarantee that the IC agreement will be approved.

• The contractor doesn’t have insurance and I don’t think they will work with us if they have to buy it. Do they have to get it?
  The insurance is required for all UC vendors. One option to help with this situation is for the contractor to build the cost of the insurance into their quote. It is their business cost and they can use to calculate their rates. In a few cases, a request for an insurance waiver can be requested, but they are only granted in rare circumstances and the waiver has to be made by central campus Risk Management.

• They are a UC employee but not with my department. Can I still hire them?
  UC employees cannot be hired as an independent contractor. We can work with you to find alternate ways of hiring and paying the person. Please contact the Sr. HR Generalist when this happens.

• The contractor submitted a proposal to me. Can I use that for my statement of work?
  You can use that to develop your statement of work but it will not contain all of the information that is needed and asked for on the statement of work template.
• I want to pay them by the hour. 
  For most cases, independent contractor should be compensated for the specific 
  job/deliverables. One of the IRS tests is that there is an opportunity for profit/loss 
  for the contractor. Billing by the hour eliminates that opportunity and the 
  relationship is more like an employee than a vendor. The contractor can estimate 
  their rates by the hour, but we should pay a flat dollar amount per deliverable.

• Can I just give them an honorarium? 
  An honorarium is given for a distinguished service to the University. The amount 
  given for the honorarium is not negotiated with the person and there should not 
  be an expectation of payment. In most cases it should be very clear if the 
  payment should be an honorarium or an independent contractor.

• How is the Purchasing Agreement different from the Statement of Work? 
  The Purchasing Agreement is the contract that determines the appropriate terms, 
  conditions, and clauses to protect the University. Purchasing will work directly 
  with the contractor to negotiate the terms of the standard agreement, if needed. 
  The statement of work is used to build the Purchasing Agreement and gives 
  additional information to help determine that the person is an independent 
  contractor.

• This work is on-going; do I have to complete this paperwork every time? 
  If you know you are going to use this contractor multiple times throughout the 
  year the statement of work should reflect your anticipated needs. Contracts can 
  be amended and extended. If the work the person is doing is new and unrelated 
  to the previous contract, a new statement of work is required and the support 
  documents to reflect the new work being done.

• They didn’t finish the work – what do we do? 
  If they are in breach of the contract, University may withhold payments to the IC. 
  To help avoid these situations it is important to have a clear statement of work 
  with defined deliverables tied to payments. All required paperwork for IC 
  engagement is protection for the university and your group and gives us options 
  when work is not completed or not done to specification. If this situation develops 
  please contact Purchasing and they will work with you to find a way to resolve 
  the situation.