

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.

Applicable policies:
Business and Finance Bulletins:
34, 43, 63 and 77
PPSM Policy 82- Conflict of Interest

- 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 direct to the ERSO Intranet or Bear Buy for HR 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.**

Document	Who Completes
Classification Worksheet for Federal Tax Purposes – details the IRS factors	Requestor
Statement of Work – defines what the product is, who will evaluate it and the pay schedule	Requestor
Source Selection & Price Reasonableness Justification – describe why this vendor was selected and others were rejected (required for Federally-funded purchases ≥\$10K and non-Federally-funded purchases ≥\$100K)	Requestor
After the Fact (ATF) – must be completed if request is being made after the work is has been started. Note: Payment requests made after the work has started may not be approved and the vendor may not be paid. ATF form must be signed by Unit's Dean or Vice Chancellor	Requestor
Conflict of Interest – Identifies if IC is a current or prior employee or if they have a personal or financial connection to UC Berkeley	Independent Contractor
Proof of Liability Insurance – very specific coverage needed	Independent Contractor
Current resume/CV or website portfolio	Independent Contractor
Vendor Request form – for new vendors only	Independent Contractor
Purchasing Agreement – formal contract between UC Berkeley and the contractor. Will be written after HR Generalist review.	Purchasing

Finding Forms:

The forms are found on the ERSO website under [Services » Human Resources » Human Resources Forms & Procedures](#).

The new vendor form can be found here:

[UC Berkeley Substitute W-9 & Supplier Information Form](#)

Recruitment & Hiring

Independent Contractors

[Conflict of Interest Certification](#)

[Classification Worksheet for Federal Tax Purposes](#)

[Instructions](#)

[Process Flow](#)

[UCOP Source Selection & Price Reasonableness Justification Form \(Federally-funded purchases ≥\\$10K & non-Federally-funded purchases ≥\\$100K\)](#)

[Statement of Work](#)

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: ERSO Purchasing
 1608 4th St. MC: 7600
 Berkeley, CA 94720

Document must state the UC Regents are additional insured

UC Berkeley – Through Campus Connections

<https://ucberk.campusconnexionsuc.com/other-constituents/vendors-and-contractors/vendors-and-contractors.html>

The image shows a portion of an ACORD Certificate of Liability Insurance form. It includes sections for General Liability, Commercial Auto, and Professional Liability. Each section has a table with columns for 'Type of Coverage', 'Policy Number', 'Please check the policy effective date', and 'Please check the policy expiration date'. There are also checkboxes for 'Additional Insured' and 'Contractor's Control of Operations'.

Revising a contract:

When to contact HR Generalist: If there are changes to the Statement of Work (taking away deliverables or adding deliverables etc.) please forward the changes to HR Generalist for review. 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 existing 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 Professional Services Agreement will contain the specific details.

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 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 contractors 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 along with 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, the 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.