

California State University, Long Beach Research Foundation Engagement of Independent Contractors – Policy and Procedure

Updated February 2013

ALL INDEPENDENT CONTRACTOR AGREEMENTS MUST BE APPROVED IN ADVANCE BY THE RESEARCH FOUNDATION HUMAN RESOURCES DEPARTMENT PRIOR TO THE COMMENCEMENT OF ANY SERVICES BY THE INDEPENDENT CONTRACTOR.

BACKGROUND AND DEFINITIONS

Occasionally, there may be need for short-term professional services that cannot be performed by existing employees. The use of an independent contractor may satisfy this need in some qualified situations. Although the classification of independent contractor is not clearly defined by federal or state taxing agencies (i.e. the Internal Revenue Service (IRS) and the Employment Development Department (EDD) respectively) we have set forth the following guidelines to aid in the appropriate use of independent contractors.

Independent Contractor - An independent contractor is an individual or entity that is not affiliated with the University (CSULB), hereby referred to as "University," or the CSULB Research Foundation, hereby referred to as "Research Foundation," who is providing primarily professional or technical advice or services under a written agreement or engagement letter.

Employee - An employment relationship exists when the employer (Research Foundation) has the right (whether or not it exercises the right) to supervise and control the manner of performance as well as the results of the service by the individual (employee). When such a relationship exists, the formal employment process must be followed.

Independent contractors are in business for themselves and receive a fixed amount for services rendered (this fixed amount includes all expenses associated with providing the service as applicable and agreed upon – i.e. travel, lodging, meals, mileage, resources/materials, copy fees, etc.) The Research Foundation is not required to withhold federal or state taxes (except for certain Non-Resident Aliens), or unemployment, social security, workers' compensation or disability insurance benefits from their payments. It is very important that individuals who should be hired as employees not be set-up as independent contractors due to the potentially severe financial consequences facing the employer (Research Foundation)/project. Both the IRS and the EDD have the legal authority to audit employer records to check for such misclassifications. When individuals are found to be misclassified as independent contractors, either agency will not only collect the applicable taxes that should have been withheld, but may also impose penalties on the employer (Research Foundation)/project.

POLICY

The following statements outline the CSULB Research Foundation policy for the use of independent contractors:

- The Independent Contractor Agreement must be submitted to Research Foundation Human Resources a minimum of five (5) business days prior to the requested start date of the contract.
- The services of independent contractors may only be secured when a determination has been made by the Research Foundation Human Resources Department that the services to be performed and the individual performing the services meet the guidelines set forth in this policy, and when the appropriate Research Foundation Independent Contractor Agreement form has been approved by the Research Foundation Human Resources Department.
- The use of independent contractor services is expected to be temporary and infrequent.
- The services of an independent contractor shall not be used to carry out a major portion of a program. Individuals responsible for directing a program or participating extensively in the administration of a program must follow the formal employment process.
- The services of an independent contractor shall not entitle the independent contractor to a standing other than "independent contractor" in any published report or document.
- Independent contractor services entered into pursuant to sponsored contracts or grants shall conform to all provisions of the applicable contract or grant, both with respect to the propriety of the independent contractor relationship and the terms of the relationship.
- An independent contractor engaged by the Research Foundation shall not hire any employee of the University or Research Foundation to perform any services covered by the engagement.

In addition, the Research Foundation Human Resources Department will utilize the following twenty (20) common law factors in determining the appropriateness of an independent contractor classification:

- | | |
|-----------------|---|
| Factor 1 | <u>No instructions</u>
Independent Contractors are not required to follow, nor are they furnished with instructions to accomplish the job. |
| Factor 2 | <u>No training</u>
Independent Contractors do not receive training by the Research Foundation. They use their own methods to accomplish the work. |
| Factor 3 | <u>Services do not have to be rendered personally</u>
Independent Contractors are hired to provide a result and usually have the right to hire others to do the actual work. |
| Factor 4 | <u>Work not essential to department or program</u>
The success of the department or program should not depend on the services of independent contractors. An example in violation of this factor would be hiring a Project/Program Director as an independent contractor. |
| Factor 5 | <u>Own work hours</u>
Independent contractors set their own work hours. |

- Factor 6** **No continuing relationship**
Independent contractors normally do not have a continuing relationship with the Research Foundation.
- Factor 7** **Control their own assistants**
Independent contractors should not hire, supervise, or pay assistants at the direction of the department or program administrator. If assistants are hired, it should be at the independent contractor's sole discretion.
- Factor 8** **Time to pursue other work**
Independent contractors should have enough time available to pursue other gainful work.
- Factor 9** **Job location**
Independent contractors control where they work. If they work on the CSULB campus or in any Research Foundation facility it should not be under the direction of a CSULB or Research Foundation representative.
- Factor 10** **Order of work set**
Independent contractors determine the order and sequence in which they will perform their work.
- Factor 11** **No interim reports**
Independent contractors are hired for a final result, and therefore should not be asked for progress or interim reports.
- Factor 12** **Payment timing**
Independent contractors are paid by the job, not by time. Payment by the job can include periodic payments based on a percentage of job completed. Payment can be based on the number of hours needed to do the job times a fixed hourly rate. However, this should be determined before the job commences.
- Factor 13** **Working for multiple firms**
Independent contractors often work for more than one firm at a time.
- Factor 14** **Business expenses**
Independent contractors are generally responsible for their incidental expenses (including travel, meals, lodging, materials, etc.).
- Factor 15** **Own tools**
Independent contractors normally furnish their own tools.
- Factor 16** **Significant investment**
Independent contractors should be able to perform their services without University or Research Foundation facilities (equipment, office furniture, machinery, etc.). The independent contractor's investment in his trade must be real, essential and adequate.
- Factor 17** **Services available to the general public**
Independent contractors make their services available to the general public by one or more of the following:
- Having an office and assistants;
 - Having business signs;
 - Having a business license;
 - Listing their services in a business directory and/or advertising their services.
- Factor 18** **Possible profit or loss**
Independent contractors should be able to make a profit or loss. Employees can not suffer a loss. Five circumstances show that a profit or loss is possible:
- If the independent contractor hires, directs and pay assistants;
 - If the independent contractor has his/her own office, equipment, materials or facilities;
 - If the independent contractor has continuing and recurring liabilities;
 - If the independent contractor has agreed to perform specific jobs for prices agreed upon in advance;
 - If the independent contractor's services affect his/her own business reputation.
- Factor 19** **Limited right to discharge**
Independent contractors cannot be fired as long as they produce a result which meets the contract specifications.
- Factor 20** **No compensation for non-completion**
Independent contractors are responsible for the satisfactory completion of a job. If the job is not completed they may be legally obligated to compensate the Research Foundation for failure to complete.

PROCEDURE

Setup - Requests for the use of Independent Contractor services must be approved in writing by the Research Foundation Human Resources Department prior to the commencement of any services by the Independent Contractor. It is essential that the Independent Contractor Agreement is filled out in its entirety. In Section 4.01 of the Agreement, it is also very important that the description of services is very explicit and inclusive of all services expected of the Independent Contractor (if additional space is needed, an attachment is acceptable. Note "See Attached" in Section 4.01). Please also include information pertaining to the Contractor's expertise and the fact that they are in business for themselves providing contract services to others. No commitment for the engagement or payment of services will be binding upon the Research Foundation without advance written approval by the Research Foundation Human Resources Department. Once the Agreement is approved by the Research Foundation Human Resources Department, the independent contractor may begin to perform services. Agreements for services which begin prior to written approval by the Research Foundation Human Resources Department may be referred to the project's college office for additional approval, payment and/or appropriate corrective action.

Payment - Payments may be made to the independent contractor on an intermittent basis or in a single lump-sum payment. The independent contractor must submit an invoice or a Direct Payment Request Form approved by the department and/or project to initiate a payment. Payments may not be made in advance of services rendered.