

# UNIVERSITY OF OKLAHOMA

## Norman Campus

### Independent Contractor or Consultant Guideline—Rev. January 2007

#### PURPOSE

This Guideline and its corresponding procedures define departmental responsibilities relating to independent contractors, consultants, or payment for professional services (including U. S. citizens and foreign nationals) for the University of Oklahoma. Payments for professional services, their reporting and taxability are governed by the Internal Revenue Code and the Oklahoma State statutes.

#### INTRODUCTION

The criteria used for determining whether an individual should be considered an employee or independent contractor are established by the Internal Revenue Service (IRS), Department of Labor, and the courts. In general, an **employee** is an individual who performs a service for the University and operates under the direction and control of the University. Direction and control can be inferred to exist when the University has the **right** to control the results as well as the means and methods of the worker.

An **Independent Contractor** is a person engaged by the University on a limited basis to perform specific functions or tasks at his or her own discretion with respect to the means and methods used to accomplish the assignment. Independent contractors are also known as consultants or independent service providers. These individuals must not be currently employed by the University and must not have been employed by the University within the previous rolling twelve month period.

The IRS has focused on this issue and given high priority to the classification of employment relationships and the tax implications of the decisions made. The penalties for misclassification can result in the University being held responsible for under payment of taxes including federal and state income tax, social security and Medicare taxes, and federal unemployment taxes. Whether inadvertently or intentionally; misclassification of workers as independent contractors may result in charges to the department for the taxes, penalties, and interest. Therefore, all University Departments will adhere to the procedures as outlined below.

#### GENERAL GUIDELINES

Prior to engaging the services of any individual or firm as an independent contractor, the contracting department must obtain approval from the Office of Human Resources (HR) by submitting a Request for Independent Contractor Approval Form. In addition to the requesting department, there are **three offices** that will work together to approve the independent contractor form for foreign nationals or U. S. citizens and to provide

payment for any IC. These offices are Employment and Compensation, Payroll and Records and Financial Support Services (FSS).

The Director of Human Resources may delegate authority to make this determination to departments with a high volume of work being done by persons considered to be independent contractors. In these instances, responsibility for properly classifying these individuals, as well as the financial liability rests with the delegated department. The length of time for services to be performed as designated on the request form is not to exceed one year from the date the request is approved.

State law prohibits any State agency (the University) from entering into a sole source contract or a contract for professional services with or for the services of any person, who has terminated employment with or who has been terminated by that agency for one (1) year after the termination date of the employee from the agency. (Oklahoma Statute Title 74, Section 85.42, Oklahoma Central Purchasing Act.).

Any individual actual “contract” specifying details of work to be performed or liability for non-performance is between the contractor and the department engaging them to perform the services and is the responsibility of the department. The University policy is that the payment is not to be paid until the services have been performed and proper approvals and documentation are forwarded to Financial Support Services.

If the service provider is a business operating with a Federal Employer Identification Number (FEIN), the University department should process payment directly as a vendor through Financial Support Services. These payment requests will follow normal purchasing and payment guidelines and approval through Human Resources is not required.

In order to qualify as an Independent Contractor, the service provider must be an individual or Sole Proprietor utilizing a social security number for tax purposes and providing services, not goods or products. Purchases of goods or products must follow the normal purchasing and payment guidelines.

If the service provider is used more than once a year by the same department for similar projects, the Request for Independent Contractor Approval Form need only be completed once **every rolling twelve (12) months from the date the form was approved by Human Resources. This is not calendar year, tax year or fiscal year.** If there is a repeat provider, the best practice is to complete a new form at the beginning of each fiscal year. During the 12 month rolling period, the departments may make copies of the approved form for processing payment. A new form need not be completed for each invoice or incident of services.

## **PROCEDURAL STEPS FOR US CITIZENS:**

### **1) THE DEPARTMENT WILL:**

- Complete the Independent Contractor form (IC) and send it to Human Resources Employment Office or its designee AFTER approval by the appropriate sponsor.

**IMPORTANT NOTE:** If the Department is a part of the College of Continuing Education (CCE) family of departments, they will send the IC Request Form to **the CCE VP/Provost Office** after the approval by the appropriate sponsor.

**2) EMPLOYMENT AND COMPENSATION WILL:**

- 1) Review IC request form and determine whether or not the person is eligible to be an independent contractor according to IRS regulations.
- 2) Contact the department to resolve any problems with the form.
- 3) Assist the department with position numbers needed for non-approved contractors which must be paid through payroll methods.

**3) PAYROLL AND RECORDS WILL:**

- Initial approval on the IC form and route it back to Employment.

**4) THE DEPARTMENT WILL:**

- Verify that the services have been performed satisfactorily.
- Obtain an invoice or payment request. Please note that travel expenses that are listed separately from the fee for services **can be excluded** from the Independent Contractor’s income for 1099 reporting purposes **if the travel expenses are within the allowances stipulated in the travel statutes for state employees**. To determine if the travel expenses are within the allowances, the same information and documentation is required. For example, if per diem is being claimed, the date and time the travel began must be listed. Receipts must be attached for any lodging, airfare, etc. Mileage reimbursement must include the location the travel began, any points that business was conducted, and the final destination. The designated lodging form may be applicable (located [www.ou.edu/aa/fss.htm](http://www.ou.edu/aa/fss.htm)). Even though the same information is needed, **the State of Oklahoma travel voucher should not be completed for the Independent Contractor’s travel expenses**. Contractor travel cannot be billed on separate documents, but must be included in the invoice item list. See an example below:

<b>Fees</b>	<b>\$1000.00</b>
<b>Airfare</b>	<b>250.00</b>
<b>Per diem 07/01/06 0600 to 07/03/06 1800 Norman, OK</b>	<b>97.50</b>
<b>Mileage (Kansas City vicinity airport) 30 @ 44.5</b>	<b><u>13.35</u></b>
<b>Total</b>	<b>1360.85</b>

- Indicate the department number and obtain the sponsor's approval on the invoice/payment request.
- Forward the approved invoice/payment request to Financial Support Services along with a **copy** of the approved IC form. If a grant or contract department number is to be charged, please forward it to the appropriate office for approval before submitting to FSS for payment. **Regardless of the amount, purchase orders are no longer required for payment to individuals.**
- **Keep the original, approved Independent Contractor form in the department files for seven (7) years, for audit purposes. (Oklahoma Department of Libraries, record series number 5-114).**
- During the 12 month rolling period, the departments may make copies of the approved form for processing payment. A new form need not be completed for each invoice or incident of services.

**5) FINANCIAL SUPPORT SERVICES WILL:**

- Once the approved invoice/payment request has been submitted with a copy of the approved IC Form, FNF, invoice and receipts, Financial Support Services will then issue a check for the IC.
- Maintain tax records on any payments made to individuals and generate the appropriate 1099 forms, sending copies to the IC and to the IRS.

**6) INTERNAL AUDIT WILL:**

- Conduct audits on any and all of the above to assure University compliance with all pertaining IRS laws, State, Federal Laws and University policies.

**ADDITIONAL PROCEDURAL STEPS FOR FOREIGN NATIONALS:**

The International Tax Specialist in Payroll must sign approval on the IC request form, if required, before it can be approved by Human Resources and before it can be processed by the department for payment through Financial Support Services.

**It is very important that the departments hiring international persons complete the required paperwork as far ahead of time as possible so that the international person will not experience any delays in receiving payment for services rendered.**

**1) THE DEPARTMENT WILL:**

- Indicate that the service provider is a Foreign National on the IC form if the work will be performed in the U.S. If the work is to be performed in a foreign country,

then the Foreign National Information form (FNF) is not needed and the tax laws of that country will apply.

- Contact the contractor to obtain the person's e-mail address.
- Give the person's name, e-mail address and social security or Individual Taxpayer Identification Number (ITIN), if the person has one, to the International Tax Specialist in Payroll.
- Contact the potential contractor and Payroll to set up an appointment.
- Let the potential contractor know that Payroll will need to see copies of the person's immigration documents including the person's passport and I-94 card. These documents are also necessary to confirm information on the FNF. If the person is eligible for tax treaty benefits or must apply for an ITIN, these documents will be signed at this time.

## 2) EMPLOYMENT AND COMPENSATION WILL:

- If a foreign national is performing the service, a copy of the IC request form will be forwarded to Payroll to determine the taxability of the payment.
- For foreign nationals, Employment will approve the form and send it back to the department after it has been approved by Payroll's International Tax Specialist.

## 3) PAYROLL AND RECORDS WILL:

- Send an e-mail to the person to give them a user name and password so that he/she can enter the required foreign national information into the university's new Foreign National Information System (FNIS). **This will replace the paper Foreign National Information form.** Once the person has input his/her information, payroll can determine the person's tax status and potential eligibility for a tax treaty.
- If eligible, a tax treaty will be generated for the person. No taxes will be taken out of honorariums for persons who qualify for and sign the tax treaty. If not eligible for a tax treaty, the person's honorarium will be taxed at 30%.
- Meet with the IC to make copies of immigration documents such as the passport and I-94 card. The person will also sign tax treaty at this time.
- Send a copy of the Foreign National Information Form, copies of immigration documents and tax treaty, if eligible, to FSS.
- Mail copies of the tax treaties to the appropriate state and federal offices.
- Independent contractors who do not provide the FNF information will be taxed as a nonresident alien and at the highest rate – 30%

**4) THE DEPARTMENT WILL:**

- Forward the approved invoice/payment request to Financial Support Services along with a **copy** of the approved IC form and any FNF information provided by the Payroll Office.

**Any questions should be referred to the appropriate department:**

- **Financial Services regarding payments or 1099 statements**
- **Payroll regarding Foreign Nationals, tax treaties or withholding requirements**
- **Employment and Compensation regarding Independent Contractor Approvals**

**FORMS:**

**Independent Contractor Approval Form** is found in “documents online” on the OU Human Resources web page at [www.ou.edu/ohr](http://www.ou.edu/ohr) in the Employment section

**Foreign National Information Form** is found at [www.ou.edu/ohr](http://www.ou.edu/ohr) under “documents online in the Payroll section.

**Designated Lodging Form** is located [www.ou.edu/aa/fss.htm](http://www.ou.edu/aa/fss.htm)