



Title: Professional Services Policy and Procedures
Prepared by: Controller's Office
Administrator: University Controller
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Summary

The purpose of this document is to set forth the University's policy and procedures for the engagement of independent contractors for professional services. Because significant tax penalties may be imposed for incorrectly classifying an employee as an independent contractor and the University may be exposed to unnecessary legal liability, it is important that University address these issues by defining a common standard in the way it conducts activities with external individuals and organizations.

This policy is applicable in all situations in which the University recognizes a need for services involving an individual or organization external to the University (i.e., the required service is not performed or readily available to be performed by University employees). This policy applies to all activities involving independent contractors, regardless of the funding source. The procedures contained in this document must be followed prior to the performance of any services by an independent contractor.

Definitions of Terms Used in This Policy

Contract - A legally binding, bilaterally executed agreement that establishes the rights and duties of the parties and provides remedies for breach

Employee - A person paid through the University payroll system to perform a service for the University. Typically, the University controls the work to be performed, as well as how, when, and where it will be performed. Employees are provided the facilities and tools necessary to perform and are not at risk for profit or loss.

Guest Speaker - A non-employee engaged by the University to lecture, present, or otherwise speaks on a subject about which s/he is considered to be knowledgeable. Examples include speakers/presenters at conferences, symposiums, or lecture/speaker series and/or guest lecturers in classes or other training events. For purposes of this policy, guest speakers are considered to be independent contractors (see definition below).

Independent Contractor - An individual or organization having no connection or relationship with the University engaged to perform a specific service not readily available from within the University workforce. An independent contractor (a.k.a., consultant, freelancer, etc.) is bound by contract to perform services as the master of her/his own time, with full liability for job-related actions, and responsibility for all aspects of the means and methods of the service to be performed. The University may require proof of adequate insurance from independent contractors.

Professional Services Agreement (“PSA”) - A bilaterally executed contract that establishes the relationship of employer-independent contractor, outlining the specified service to be provided by the independent contractor to the University.

Identification of Relationship to be Created

Prior to the commencement of any engagement, the relationship of the parties must be identified to determine if the service provider should be classified as an employee of the University or as an independent contractor. To better assist in determining the relationship, please complete the following questionnaire:

http://www.wpi.edu/Images/CMS/HR/IRS_20_RULE_TEST_FOR_ESTABLISHING_EMPLOYMENT_RELATIONSHIP.pdf

In addition, the following procedures should be followed to make such a determination:

1. Present and former University employees

Present employees of the University should be paid as an employee. Contact Human Resources with any questions regarding payment of former employees.

2. Other individuals and organizations

In accordance with Internal Revenue Service (“IRS”) guidelines, a service provider must be free to determine how and when work is to be performed. In the absence of such independence, a worker should normally be classified as an employee. The IRS has developed a series of factors aimed at satisfying the common law test of independence. In determining whether the person providing service is an employee or an independent contractor, all information that provides evidence of the degree of control and independence must be considered. According to the IRS, facts that provide evidence of the degree of control and independence fall into three categories:

1. Behavioral: Does the company control or have the right to control what the worker does and how the worker does his or her job?
2. Financial: Are the business aspects of the worker’s job controlled by the payer? (These include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)

3. Type of Relationship: Are there written contracts or employee-type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

Under the Massachusetts Independent Contractor Law, M.G.L. c. 149, §148B, those providing services to employers are presumed to be employees rather than independent contractors. In order for an employer to legitimately classify a worker as an independent contractor, the employer must meet all three elements of the following three prong test:

1. The individual worker must be free from the control and direction of the employer;
2. The services performed by the individual worker must be outside the usual course of business of the employer; and
3. The individual worker must be customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the services provided to the employer.

If, after evaluating the answers to the above factors, the individual is determined to be an independent contractor, then this policy applies and should be followed. Any questions involving the determination of whether or not an employer/employee or an independent contractor situation exists should be addressed to the Controller's Office and/or the Office of Human Resources.

Responsibilities

Department/Service Recipient

- Read and comply with this policy
- Determine whether a service provider should be classified as an independent contractor or employee
- Communicate information about this policy and procedures to any prospective independent contractor
- For agreements under federal awards, verify that independent contractor is not on the Excluded Parties List System ("EPLS"). See <https://www.sam.gov/portal/SAM/#1>
- Ensure that an appropriate professional services agreement is completed and approved on behalf of the University prior to the commencement of services by any independent contractor
 - For agreements under sponsored programs, obtain approval from the Office of Sponsored Programs
 - Obtain Controller's Office approval
- Process appropriate documentation in support of transactions involving independent contractors, which includes maintaining official records of work performed, approving invoices (a Principal Investigator function on sponsored programs), and ensuring that payments in total do not exceed the approved amount in the Professional Services Agreement.

Department Heads

- Ensure that this policy is communicated to all departmental faculty and staff
- Ensure compliance with this policy
- Approve for the department and routing for University approval all appropriate professional service agreements

Independent Contractor

- Provide all necessary information to department for determination of status and generation of professional services agreement
- Provide all required documentation for payment of completed services for which a report or some other evidence of completion has been provided
- Provide completed and signed W-9 form

Controller's Office

- Review and approve professional services agreements
- Process all appropriate payment requests
- Ensure that professional service agreements under sponsored programs have been completed properly, executed by both parties, are allowable and allocable to the sponsored program award to be charged, and that no apparent conflict of interest exists

Office of Sponsored Programs ("OSP")

- Create and approve all professional services agreements under sponsored programs when the standard agreement is not appropriate for use
- Approve and forward to Controller's Office all professional services agreements under sponsored programs

Technology Transfer Office ("TTO")

- Create and approve professional services agreements when changes to the standard agreement are needed due to technology ownership issues

Procedures

When the services of an independent contractor are required the requesting department should complete a **Professional Services Agreement ("PSA") when fees are expected to exceed \$2,000.** <http://www.wpi.edu/offices/finops/controller-forms.html>

(Note: For agreements greater than \$10,000, three [3] competitive bids or a sole source justification will be required, in accordance with the University's competitive bidding procedures). This form may be used in most situations where there are no extenuating issues, such as ownership of intellectual property. The completed form (in duplicate) should be sent to

the independent contractor for signature prior to the commencement of services. Prior review by the Controller's Office and Office of Sponsored Programs (for transactions involving sponsored programs) is recommended.

When the independent contractor signs and returns the agreement, the requesting department should review it to determine that it has been properly executed by the independent contractor and forward it to the Controller's Office or the Office of Sponsored Programs (for transactions involving sponsored programs) for review and signature. Since the agreement templates are not numbered, it is recommended that requesting departments create a recognizable reference number for the independent contractor to provide when submitting invoices against the agreement (agreement date and first 5 letters of the independent contractor's last name or organization name).

Once the agreement is reviewed and executed by an appropriate University signatory, one original will be retained in the Controller's Office. The other original will be returned to the requesting department for forwarding to the independent contractor and for making a copy for department files.

Subsequent invoices received from the independent contractor must be approved by an appropriate signatory in the requesting department (e.g., the Principal Investigator on sponsored programs) and forwarded to the Controller's Office for payment processing. Requesting departments are responsible for maintaining control of the amount(s) paid so as not to exceed the currently agreed upon amount.

For Independent Contractors When Extenuating Circumstances Require the Use of an Alternative Agreement

Occasionally, it may be necessary for the University to draft an independent contractor agreement to fit a unique situation. These situations are most often determined in early discussions with an independent contractor or after the requesting department completes and forwards one of the standard agreements mentioned previously. An example of this type of situation is when an independent contractor is asked to use a technology or methodology owned solely by the independent contractor, which becomes the basis for providing a service for the University. In this situation, the issue of ownership or use of the product may arise and the language contained in the Professional Services Agreement may not be appropriate. When this occurs, the requesting department should contact the Technology Transfer Office (for technology ownership modifications); the Office of Sponsored Programs (for sponsored programs) or the Controller's Office for all other circumstances and request the development of an independent contractor agreement appropriate for the circumstance. Once developed, the procedures indicated above for agreement processing activities should then be followed.

Modifying an Existing Professional Services Agreement

Once signed, a Professional Services Agreement is a legally binding document that cannot be changed without the mutual consent of the parties. In the event an agreement requires modification, the requesting department should complete an **Amendment to Professional Services Agreement** ("APSA") form. <http://www.wpi.edu/offices/finops/controller-forms.html>

After completing, the form should be sent to the independent contractor for signature. Upon return by the independent contractor, the procedures above for processing professional services agreements should be followed.

Questions

Questions regarding this policy and/or the procedures contained in it should be addressed to the Controller's Office or to the Office of Sponsored Programs for transactions under federal grants, contracts, or other externally funded agreements.