

# UC Davis Policy and Procedure Manual

## Chapter 380, Personnel--General Section 70, Consultant Agreements

Date: 2/8/16, rev. 11/3/16

Supersedes: 9/30/15

Responsible Department: Procurement & Contracting Services

Source Document: Business and Finance Bulletin BUS-34, Securing the Services of an Independent Consultant

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### I. Purpose

This section outlines policy and procedures for securing the services of independent consultants through Contracting Services, Business and Revenue Contracts.

- A. Procedures for consulting contracts obtained through the UCDHS Health Systems Contracts Office may differ.
- B. Contracts for design professionals, facility planners, or engineers governed under the UC Facilities Manual, are secured by the Design & Construction Management office on the Davis campus and by Facilities Design & Construction at UCDMC.

### II. Definitions

- A. Employer-employee relationship—a relationship where the University has the right (whether or not it exercises the right) to supervise and control the manner of performance, as well as the result of service.
- B. Independent consultant--an individual or firm not employed by the University, of proven professional or technical competence that provides primarily professional or technical advice to the University. The University does not control either the manner of performance or the result of the service. The end product is usually a written or oral report, study, or list of recommendations.
- C. Independent contractor relationship—a relationship in which the University has the right to control only the result of service, not the manner of performance.

### III. Policy

#### A. General Requirements

- 1. Arrangements to secure the services of an independent consultant may be entered into only when the services are so specialized or highly technical that they cannot be performed economically or satisfactorily by existing University staff.
- 2. Independent consultants are primarily used to obtain recommendations for solving clearly delineated problems, on an infrequent basis.
- 3. An independent consultant may not be used to carry out a major portion of a program. If there is a need for someone to direct or participate extensively in a University program, the person must be employed through Human Resources using the regular employment process.
- 4. The determination regarding employee versus independent consultant status is typically made by the Associate Director--Procurement & Contracting Services, based on the criteria in Business and Finance Bulletins BUS-34 and BUS-77. In cases where it is difficult to determine the correct status, the unit is to consult with Human Resources to determine whether an employer-employee relationship exists. Only upon determination that no employer-employee relationship is to be established can the proposed agreement be executed. If an employer-employee relationship is to be established, the unit then follows the standard employment process.

5. An independent consultant must not be entitled to credit other than as "consultant" in any published report or other document.

**B. Conflict of Interest**

1. The University's conflict of interest code requires all University employees to disqualify themselves from participating in a University decision that may result in material financial gain to them. This applies to decisions relating to contracting for the services of an independent consultant. Further, an independent consultant must not be in a reporting relationship to a University employee who is a near relative or is the near relative be in a decision-making position with respect to the consultant. Refer to Sections [330-05](#) and [380-16](#).

2. Conducting business with consultants, employees, former employees, and independent contractors.

California Public Contract Code Sections 10515 through 10524 restrict the way UC does business with consultants, employees, former employees and independent contractors. It primarily impacts successor contracts, employee vendors, and contractors who are former UC employees. See Section [330-05](#).

**C. Privacy of and Access to Information**

1. If the consultant services will involve collecting information about individuals, the department proposing to engage the consultant must be guided by University policies pertaining to privacy of and access to information. Additionally, the resulting consultant agreement must abide by Section [320-20](#).
2. Tape recorders are not be used in discussions with University staff or their agents unless explicitly permitted in the agreement and all parties are advised of their presence.

**IV. Procedures**

For information on requests processed through the UCDHS Health Systems Contracts office (see V, below).

**A. Selection of Consultant**

1. If the amount of payment by the University to an independent consultant is expected to be \$15,000 or more in any 12-month period, proposals must be solicited from three or more qualified consultants. Exceptions must be justified by the department and the dean or vice chancellor and approved by the Associate Director--Procurement & Contracting Services.
2. Selection of the independent consultant is based on qualifications, resources, experience, and needs of the University. Independent consultants must not be awarded a contract for services that are required, suggested, or otherwise deemed appropriate in the end product of a previous consulting services contract with the University.
3. Fees charged by the consultant must be reasonable for the services to be performed, as determined through evaluation of competitive proposals and/or the knowledge and judgment of the Associate Director--Procurement & Contracting Services or his/her designee.

**B. Agreement Covering Services**

1. The business agreement and related amendments between the University and an independent consultant are prepared by Contracting Services, Business & Revenue Contracts Office and executed by the Associate Director--Procurement & Contracting Services or designee and the Chief Procurement Officer or designee prior to the

beginning of any service, based on criteria in [Business & Finance Bulletin BUS-34](#).

Purchase orders are not used to execute an agreement for consultant services.

2. Extension of the termination date, expansion of the scope of services, or modification of payment amounts require prior approval of the dean or vice chancellor. Following such approval, the Department initiates a Quali Financial System (KFS) amendment request, and an amendment is to be prepared by Business & Revenue Contracts and executed by the Associate Director--Procurement & Contracting Services.

C. Payment for Services

1. A consultant is required to submit an invoice including the appropriate charges and indicating the agreement number and the consultant's taxpayer identification number.
2. Payment is not made for services rendered prior to the execution of a written agreement except as expressly approved by the dean or vice chancellor and the Associate Director--Procurement & Contracting Services, nor is payment to be made for services rendered after the expiration of the agreement.
3. Payment is made in accordance with the schedule set forth in the agreement. In case of termination prior to completion of the work to be performed under the agreement, the project manager and department head determines an equitable compensation to be paid for the work completed based on its value to the University, provided that such compensation in no event exceeds the total agreement price.
4. Final payment will be withheld until confirmation by department project manager that the terms of the agreement have been completed.
  - a. A departmental reviewer is responsible for making the actual physical comparison between the terms of an independent consultant agreement and the evidence that the terms of the agreement have been completed satisfactorily. This evidence, or final product, is usually a report or memorandum.
    - 1) The departmental reviewer must be someone other than the departmental employee to whom the consultant reported and other than the individual who approves the final payment of the invoices required under the agreement (i.e., the department chair or designee).
    - 2) Any differences disclosed by the comparison of the agreement terms and the final product should be investigated independently by the reviewer to determine the specific causes for the differences before final payment is approved.
    - 3) These differences may not be investigated by either the individual to whom the consultant reported or the departmental official who approves the payment.
  - b. The confirmation attests to the completion of the agreement and is signed by the departmental reviewer, the departmental official to whom the consultant reported to, the department head, and the dean or vice chancellor.

V. Further Information

- A. For information on specific agreements or processes, contact the campus Business & Revenue Contracts Office, (530) 752-0370. Information on Business Contracts and other forms are available at [http://afs.ucdavis.edu/our\\_services/contracting-services/business-contracts/index.html](http://afs.ucdavis.edu/our_services/contracting-services/business-contracts/index.html).
- B. Information on the request process for UCDHS Health Systems Contracts is available at

<http://www.ucdmc.ucdavis.edu/healthsystemcontracts>; (916) 734-3820.

- C. Information on Design & Construction Management can be found at <http://dcm.ucdavis.edu>.
- D. For additional information, please see the [“UC Davis Business & Revenue Contracts and Services Reference Manual”](#).

## VI. References and Related Policies

- A. [California Public Contract Code Sections 10515-10518 and 10520-10524](#).
- B. [UC Office of the President](#):
  - 1. [Principles Regarding Rights to Future Research Results in University Agreements with External Parties](#).
  - 2. [Business & Finance Bulletin BUS-34, Securing the Services of an Independent Consultant](#).
  - 3. [Business & Finance Bulletin BUS-63, Insurance Requirements/Certificates of Insurance](#).
  - 4. [Business & Finance Bulletin BUS-77, Independent Contractor Guidelines](#).
  - 5. [Business & Finance Bulletin G-39, Conflict of Interest Policy and Compendium of Specialized University Policies Guidelines, and Regulations Related to Conflict of Interest](#).
- C. [UC Davis Policy & Procedure Manual](#):
  - 1. [Section 300-10](#), General Travel Policy.
  - 2. [Section 320-20](#), Privacy of and Access to Information.
  - 3. [Section 330-05](#), Business & Revenue Contracts.
  - 4. [Section 350-90](#), Employee-Vendor Transactions.
  - 5. [Section 380-16](#), Conflict of Interest.