

UC Davis Policy and Procedure Manual

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

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Supersedes: 10/31/96

Responsible Department: Materiel Management

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

Exhibit A, Request for Consultant Services

Exhibit B, Proposal to Furnish Consultant Services

Exhibit C, Confirmation of Completion of Independent Consultant Agreement

I. Purpose

This section outlines policy and procedures for securing the services of independent consultants. This section does not apply to design professionals, facility planners, or engineers governed under the UC Facilities Manual, whose services are secured by the Office of Architects & Engineers on the Davis campus and by Facilities Design & Construction at UCDCM. The procedures in this section apply to contracts requested through Materiel Management, Business Contracts. Procedures for consulting contracts obtained through the UCDCM Business Contracts Office may differ.

II. Definitions

- A. Employer-employee relationship—a relationship in which 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. The use of an independent consultant is expected to be infrequent and primarily for the purpose of obtaining recommendations for solving clearly delineated problems.
- 3. An independent consultant shall 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 shall be employed through Human Resources using the regular employment process.
- 4. In general, the determination regarding employee versus independent consultant status is made by the Manager—Business Contracts, 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 shall consult with Human Resources to determine whether an employer-employee relationship exists. Only upon determination that no employer-employee relationship would be established can the proposed agreement be executed. If an employer-employee relationship would be established, the unit shall follow the normal

employment process.

5. An independent consultant shall 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 shall not be in a reporting relationship to a University employee who is a near relative nor shall the near relative be in a decision-making position with respect to the consultant. Refer to Section 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 collection of information about individuals, the department proposing to engage the consultant shall be guided by University policies pertaining to privacy of and access to information. Additionally, the resulting consultant agreement shall abide by Section 320-20.
2. Tape recorders shall 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 Business 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 shall 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 Manager--Business Contracts, Materiel Management Contracting.
2. Selection of the independent consultant shall be based on qualifications, resources, experience, and needs of the University. No independent consultant shall be awarded a contract for services that are required, suggested, or otherwise deemed appropriate in the end product of a previous consulting services contract between the University and the independent consultant.
3. Fees charged by the consultant shall be reasonable for the services to be performed, as determined through evaluation of competitive proposals and/or the knowledge and judgment of the Manager--Business Contracts, Materiel Management Contracting or his/her designee.

B. Agreement Covering Services

1. The business agreement between the University and an independent consultant shall be prepared by Materiel Management Contracting, Business Contracts Office and executed

by the Manager--Business Contracts, Materiel Management Contracting prior to the beginning of any service. Purchase orders shall not be used to execute an agreement for consultant services.

2. There shall be no extension of the termination date, expansion of the scope of services, or modification of payment amounts without prior approval of the dean or vice chancellor. Following such approval, the Department initiates a DaFIS Change Purchase Order/Business Agreement (CO), and an amendment shall be prepared by Business Contracts and executed by the Manager--Business Contracts, Materiel Management Contracting.

C. Consultant Agreement Processing Procedures

Responsibility	Action
Department	<ol style="list-style-type: none"> 1. Inquires informally with other party to determine: <ol style="list-style-type: none"> a. Nature of work. b. Where and when work is to be performed. c. What University resources may be required, if any. d. Whether other party has additional specifications, or terms and conditions they request to be considered for insertion into the final consultant agreement. 2. Initiates a Requisition (PR) document in DaFIS; routes the Requisition to the dean, vice chancellor, or vice provost for approval; and sends the following materials to Business Contracts as far in advance of required date to start services for consultant as possible and before any work begins: <ol style="list-style-type: none"> a. All attachments to the DaFIS Requisition (PR) document must be forwarded to Business Contracts by completing the Cover Sheet for Requisition Attachments (e.g., detailed scope of work, budget, copies of grants or proposals, RFP specifications, Independent Contractor Pre-hire Worksheet if you are hiring an individual consultant vs. a firm, and/or the Report of Possible Conflict of Interest form if necessary). At UCDHS, send the Independent Contractor Pre-hire Worksheet to UCDHS Human Resources for approval. b. The official name of the University corporation, "The Regents of the University of California," shall be used on all agreements.
UCD Business Contracts	<ol style="list-style-type: none"> 3. Assigns a Contracts Analyst to the project, and maintains a complete record for each agreement. 4. Solicits three or more proposals from qualified consultants, if required. 5. Drafts an agreement using UCOP Standard Consultant Agreement format with necessary terms and conditions.

	<ol style="list-style-type: none">6. Negotiates legal and policy matters with other party as necessary, including reservation of rights to future research results (see UC Principles Regarding Rights to Future Research Results in University Agreements with External Parties, 8/26/99).7. Secures required approvals from UC Davis Administration and Office of the President officials, including Office of the General Counsel, when necessary.8. Secures signature of the other party.9. Sends copies of completed agreement to initiating department and any other departments involved in performing terms of the agreement or processing invoices.
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D. Payment for Services

1. A consultant shall submit an invoice setting forth the appropriate charges and indicating the agreement number and the consultant's taxpayer identification number.
2. Payment shall not be made for services rendered prior to the execution of a written agreement except as expressly approved by the dean or vice chancellor and the Manager--Business Contracts, Materiel Management Contracting, nor shall payment be made for services rendered after the expiration of the agreement.
3. Payment shall be 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 shall determine an equitable compensation to be paid for the work completed based on its value to the University, provided that such compensation shall in no event exceed 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. (See Exhibit C.)
 - a. A departmental reviewer will be 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.
 - b. The departmental reviewer shall 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). Any differences that may be 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. These differences shall not be investigated by either the individual to whom the consultant reported or the departmental official who approves the payment.
 - c. The confirmation shall attest to the completion of the agreement and shall be 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, call the campus Business Contracts Office, (530) 747-3875. Information on Business Contracts and other forms are available at

<http://businesscontracts.ucdavis.edu/>.

- B. Information on the request process for UCDHS Business Contracts is available at [http://intranet.ucdmc.ucdavis.edu/contracts](http://intranet.ucdmc.ucdavis.edu/contracts;); (916) 734-3820.

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, 8/26/99.
 - 2. Business & Finance Bulletin BUS-34, Securing the Services of an Independent Consultant, 8/15/98.
 - 3. Business & Finance Bulletin BUS-63, Insurance Requirements/Certificates of Insurance, 7/1/92.
 - 4. Business & Finance Bulletin BUS-77, Independent Contractor Guidelines, 4/4/00.
 - 5. Business & Finance Bulletin BUS-78, A Guide to the Political Reform Act of 1974.
 - 6. Business & Finance Bulletin G-39, Conflict of Interest Policy and Compendium of Specialized University Policies Guidelines, and Regulations Related to Conflict of Interest, 6/8/02.
- C. UCD Policy & Procedure Manual:
 - 1. Section 300-10, Travel Policy Overview.
 - 2. Section 330-05, Administrative Business Agreements.
 - 3. Section 350-90, Employee-Vendor Transactions.