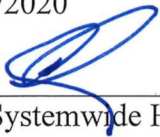


Standard Operating Procedure:	<b>Independent Contractor Agreements</b>
Division:	Business & Financial Services
Effective Date:	08/01/2020
Executive Director Approval:	
Reference to ASC or State Policy:	CSU Systemwide HR coded memo 2016-16
Revisions:	CSU Systemwide HR 2017-17 (Section III E) ICSUAM Section 5000, 900 Independent Contractors

- I. **PURPOSE:** It is critical that the CSU Fullerton Auxiliary Services Corporation (ASC) complies with state and federal laws governing reportable or taxable income and CSU policy regarding the proper classification of employees and independent contractors. Misclassification of a worker as an independent contractor can result in serious financial penalties.
- II. **SCOPE:** This procedure applies to all Independent Contractors hired to work on ASC projects including campus programs and sponsored programs.
- III. **OBJECTIVE:** Occasionally, there may be a 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.
- IV. **PROCEDURE:** The following statements outline the CSU Fullerton Auxiliary Services Corporation procedure for the use of independent contractors:

**Requesting Approval for an Independent Contractor Agreement**

Before work begins, the requestor should contact their ASC or Sponsored Programs project administrator to discuss the use of an Independent Contractor on their project and to secure preliminary allowability.

- The requestor submits the completed **Independent Contractor Checklist** (ICC) and the signed **Independent Contractor Agreement** (ICA) including the scope of work to ASC or their Sponsored Programs Administrator. The forms are available on the ASC website:
  - <http://www.fullerton.edu/asc/sp/forms.php>

If the requestor has questions on how to complete the forms, they should contact their assigned administrator.

### **Completing the Independent Contractor Agreement**

Requests for the use of Independent Contractor services must be approved in writing by the ASC Human Resources Director and the ASC Executive Director prior to the commencement of any services by the Independent Contractor.

HR may contact the requestor if there is insufficient information to make the determination. The agreement must also include information about the Contractor's expertise and the fact that they are in business for themselves providing contract services to others.

It is essential that requestors fill out the Independent Contractor Agreement in its entirety. The agreement must include a description of services expected of the Independent Contractor.

If the Independent Contractor is providing services on a campus program or sponsored program the Independent Contractor Agreement must be signed by the Principal Investigator and the College Dean or Division VP or their designee.

Independent Contractors may perform only work written into the approved scope of work. Changes in the scope of work including services, place of performance, or budget require ASC approval. Forward the new scope of work with any changes to the BFS/OSP Administrator for review. If approved, an amendment to the Independent Contractor Agreement will be issued.

Agreements for services that begin prior to review by the ASC may be referred to the project's college or division office for additional approval, payment, or appropriate corrective action.

### **The Independent Contractor Agreement must be submitted to CSU Fullerton Auxiliary Services a minimum of ten (10) business days before the requested start date of the contract.**

- The services of independent contractors may only be secured when ASC has made a determination that the individual performing the services meet the guidelines outlined in these procedures.
- The use of independent contractor services is expected to be temporary and infrequent.
- If funded by a campus program or sponsored program 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.
- If funded by a campus program or sponsored program the services of an independent contractor shall not entitle the independent contractor to a standing other than an "independent contractor" in any published report or document.
- Independent contractor services entered into under a sponsored program shall conform to all provisions of the applicable contract or grant, both concerning the propriety of the independent contractor relationship and the terms of the relationship.

- An independent contractor engaged by ASC shall not hire any employee of the CSUF or ASC to perform any services covered by the engagement.
- An independent contract named in a grant or contract is not an automatic approval of independent contractor status. If desired, the PI may request preliminary approval during the proposal process.

### **Internal Procedure for Independent Contractors**

- The requestor completes the Independent Contractor Checklist and Independent Contractor Agreement and submits to the assigned OSP Administrator for review.
- The OSP Administrator will initiate a SAM.gov check on all individuals being paid with federal funds using the list of debarred and suspended individuals available to the public through <https://www.sam.gov>. (2 CFR 200.212). A copy of the SAM report should be attached to the Independent Contractor Agreement.
- The Independent Contractor forms are forwarded to ASC's Human Resources (HR) Department for the classification and determination of possible employee status.
- ASC's HR will use the CSU Systemwide HR coded memo 2016-16 and the ABC test classified under California Assembly Bill AB5 to make its determination.
- HR will conduct background checks on approved Independent Contracts as required under the CSU system wide background check policy HR 2017-17 (Section III E). Background checks are required for individuals with direct contact with minors at CSU hosted recreational camps that are operated by CSU or on a CSU property, a CSU auxiliary, or by an outside entity.
- HR will inform the assigned ASC administrator via email if the Independent Contractor has passed the background check and forward the checklist to the Coordinator with approval signatures by HR.
- HR will indicate whether the individual has been approved to be an independent contractor or that an employee/employer relationship may exist.
- HR will return the checklist and Independent Contractor agreements to the ASC administrator for individuals not requiring a background check.
- If approved as an independent contractor, the assigned administrator will review the agreement for any insurance requirements and request required certificates of insurance with additional insured endorsements.
- The independent contractor agreement, background check email and certificate of insurance, if applicable, is forwarded to the Executive Director for signature approval. The fully executed agreement is given to ASC's Business and Financial Services (BFS) for processing.
- BFS will obtain a completed W-9 from the Independent Contractor prior to establishing a vendor ID.
- BFS issues the PO and provides the PO number to the PI.

- BFS will send a copy of the fully executed agreement to the requestor, Independent Contractor, assigned ASC administrator and copy via email to [osp@fullerton.edu](mailto:osp@fullerton.edu) on all agreements that are part of a sponsored program or campus program.
- The post-award Compliance Officer will track the Independent Contractor Agreements for sponsored programs and campus programs compliance requirements.

Should any questions arise during the review process, the reviewing department will contact the Principal Investigator with any questions.

### **Payment to Independent Contractors**

No commitment for the engagement or payment of services will be binding upon the ASC or the project without a fully executed agreement, required certificates of insurance, and the Vendor Data Form STD 204.

Invoices must include the Purchase Order number, ASC Project Number, Name of Payee, Remit-to address, Amount billed, Description of Services Performed, and the Period of Performance.

Payment cannot be paid in advance of services performed.

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 on their letterhead to the Principal Investigator.

The Principal Investigator must sign to attest that all work has been satisfactorily completed and forward the invoice to ASC Business and Financial Services to initiate a payment.

All invoices for work performed on an ASC project also requires approval the Office of Sponsored Programs

### **How the ABC Test Works in California**

Effective January 1, 2020, California Assembly Bill (AB) 5 codifies the strict “ABC” test for independent contractor classification. The statute provides that a person providing labor or services for remuneration shall be considered an **employee** rather than an independent contractor unless the hiring entity demonstrates that **all** of the following conditions are satisfied:

- A. The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of work and in fact.
- B. The person performs work that is outside the usual course of the hiring entity's business or that such service is performed outside of all places of business of the enterprise for which such service is performed.

C. The person is customarily engaged in an independently established trade, occupation or business of the same nature as that involved in the work performed

**V. APPROVALS:** ASC Human Resources Director and ASC Executive Director.

**VI. CONTROL AND COMPLIANCE:** ASC Sponsored Programs Administrator reviews the Independent Contractor request against the project budget and scope of work to confirm that the cost is allowable to the specific program.

ASC Human Resources Department reviews the scope of work to ensure compliance with California Labor Law and CSU Systemwide policies.

ASC Sponsored Programs Compliance Officer tracks the Independent Contractor agreements to ensure insurance requirements are complete and the closeout requirements are completed in a timely manner.

