



Consultant Policy
Administrative Policy A1.9
January, 2011

Introduction

It is the policy of the College to contract for independent consultant services when factors such as timing, costs, qualifications or the nature of the service to be rendered make it beneficial for such services to be acquired outside of the College rather than to be performed by employees of the College.

Consultant Agreements define the scope of services the consultant will provide, and the terms under which the services will be provided, including price, duration of services, insurance and indemnification provisions, etc. Consultant Agreements may only be entered into by the Chief Financial Officer or the President on behalf of the College, with the support of the Department Head. A consultant should not be hired without the execution of a pre-approved Consultant Agreement and accompanying Scope of Work document.

Guidelines

The College classifies and pays individuals who provide services as Employees, unless the nature of the services and other circumstances satisfy the criteria for Independent Contractor status. Section 3121(d) (2) of the Internal Revenue Code (IRC) provides that the term "employee" means any individual who, under the common law rules applicable in determining the employer-employee relationship, has the status of employee. The Internal Revenue Service (IRS) ignores contract labels, and instead examines the facts and circumstances of each situation and analyzes specific characteristics, such as behavioral and financial control and the relationship between the employer and the individual performing services, before making a determination as to whether the individual should be classified as an Employee or an Independent Contractor.

An example of behavioral control is when the Department/School provides direct instruction/supervision of a College Employee. By contrast, independent Consultants are Independent Contractors and as such are not overseen by the College in this manner. They supervise their own actions to accomplish the goals and expectations articulated through a Consulting Agreement and Scope of Work document.

If an employer-employee relationship is present, the employer is required to withhold the appropriate income and employment taxes. Penalties may be imposed by the IRS and/or other regulatory authorities in instances where an employer fails to properly withhold such taxes.

Please refer to IRS website for a detailed explanation:
<http://www.irs.gov/businesses/small/article/0,,id=99921,00.html>

Consideration Process

When considering whether to approve and execute a proposed Consultant Agreement and Scope of Work document, the President and/or CFO may, among other things, determine whether the following circumstances are present:

- The services **cannot** be performed more economically or satisfactorily through the College employment process.
- An appropriate and competitive selection process is used to secure the most qualified firm or business entity or person available, subject to the constraints of timeliness and costs.
- The hiring manager and CFO determine that charges are appropriate considering the qualifications of the independent consultant, the contractor's normal fees and the nature of the services. This is done by the completion of a Statement of Work, which is available on the College website.
- It must be determined that conflict of interest is avoided. In general, the following individuals are prohibited from contracting with the College:
 - Members of The Board of Trustees
 - University Officers and Employees
 - One's Spouse and Minor Children
- If the services are to be provided by an individual and not by a business entity or firm, the consultant is properly identified and classified as an Independent Contractor versus an Employee.
- In unusual cases where consultation is across organizational lines, and the work performed is in addition to the individual's regular workload, special approval may be requested from the Office of the Chief Financial Officer to enter into a separate Consulting Agreement/Scope of Work with an employee, including payment of a reasonable and customary consulting fee. This fee is in addition to the employee's salary as an employee. If such a request is approved by these respective offices, a written copy of the approval must be provided to Accounts Payable office along with the other required supporting documents to process payment.

Individuals who wish to contract with a proposed consultant should submit a completed Consultant Retention Request Form to their Department Head for approval and signature. The Department Head should then forward the form to the President or Chief Financial Officer for consideration. If the President or CFO approves the proposed retention, a Consultant Agreement and accompanying Scope of Work document will be prepared, which shall be executed by the President or CFO on behalf of the College, and by the consultant.