

Policy Number: 221.2

Policy: Independent Contractor

Effective Date: 3/2013

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Approved by: Business Services Director

PROCEDURE:

- I. MCA 39-71-120. Independent contractor defined.
 - A. An "independent contractor" is one who renders service in the course of an occupation and: (a) has been and will continue to be free from control or direction over the performance of the services, both under the contract and in fact; and (b) is engaged in an independently established trade, occupation, profession, or business.
 - B. If in doubt use the Independent Contractor Checklist on the Business Services Forms website.
www.msubillings.edu/boffice/forms.html
- II. Procedures for Contracting for Services of an Independent Contractor (Not for consulting services):
 - A. Describe the Services: Prepare an explicit written description of the required services.
 - B. Determine if the service is that of an "employee," an "independent contractor for services" or an "independent contractor for consulting services."
 - C. Use the correct procedure for the service. If "employee," contact Payroll. If "consulting services," use the "consulting services" procedure set forth in Section III (A) below. If "contracted services" use the following procedures.
 1. Contracts for contracted services of less than \$10,000: Obtain quotes if required. Complete the general services agreement form on the Business Services Website www.msubillings.edu/boffice/forms.html . The agreement should be completed and signed by all parties indicated on the form before services begin.
 2. Contracts for contracted services of \$10,000 or more: Except for Facilities Services which may contract up to its delegated authority, all others must complete the standard purchasing requisition form or departmental purchase order (DPO), including a full description of the desired services and suggested service provider(s).
 3. Route the requisition or DPO through the appropriate approval authorities to MSU Billings Purchasing. The Purchasing Department will review the requisition, determine if it should be handled on campus or must be processed by the State of Montana Purchasing Bureau. MSU Billings Purchasing will complete the processing by securing bids, obtaining contract signatures, obtaining required certifications and issuing a purchase order for the contracted services.
- III. Procedures for Contracting for Consulting Services:
 - A. Whenever it is reasonably foreseeable that a contract for consulting services will exceed \$10,000, the selection process outlined in Section 18-4-133 and 18-4-141, MCA, must be followed. Please contact Purchasing for more information.
- IV. General Services Agreement Instructions:

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- A. Any purchase of services from an independent contractor which is \$500 or more in value requires a written contract. Download the General Services Agreement form at www.msubillings.edu/boffice/forms.html . The form incorporates the recommendations of the Montana Department of Administration as to the provisions which should be found in such contracts.
 - 1. This form is not recommended for use if the contract is with a state or local government, a college or university or for purchase of computer programming services.
- B. This form is a proposal for a contract which incorporates the major provisions required under state law and university policy. Provisions can be modified to meet the particular needs of the contract if it is in the best interest of MSU Billings. If you need any assistance in modifying the terms of this agreement, please contact the Purchasing Department.
- C. Preparing the Contract
 - 1. The person preparing the contract should fill in the blanks as shown.
 - a. Purpose: This section should explain what the contract is intended to accomplish.
 - b. Effective date and duration: In most cases, performance should not begin until a contract has been signed and a Purchase Order has been awarded. In all cases, performance should not begin prior to the time the funds were authorized for the contracted service.
 - c. Services: This section should contain a thorough explanation of the services to be provided and the deliverables expected. Where there is a separate description of the work or proposal which has been submitted by the contractor and accepted by MSU, it should be referenced under this section. E.g., The contractor will perform the services as outlined in the proposal attached as Exhibit A to this contract.
 - d. Consideration: This section should specify the total amount to be paid to the contractor and a description of how and when it will be paid. Any instructions regarding how the contractor must submit the billing or invoice should also be described.
 - e. Ownership and Publication of Materials: This section should be reviewed carefully to assure that it is appropriate for the contract in question. If there is the likelihood that copyrightable works will be produced under the contract, it may be necessary to negotiate and draft a more thorough provision concerning the ownership of intellectual property developed under the contract.
- D. Process for Finalization
 - a. It is recommended that the general terms of the contract be negotiated with the independent contractor before the contract form is completed. After the contract is drafted to the satisfaction of the Principal Investigator or Department Head, the relevant signatures of the MSU Billings officials should be obtained and the contract should be forwarded to the contractor for his/her signature. If the contractor requests modifications which are acceptable to all parties, the contract can be redrafted or changes can be made on the contract and initialed by all of the parties. The original approved contract should be attached to the BPA with a copy retained by the department if less than \$5,000.

V. Contract Payment Information

- A. All contracts exceeding total payment(s) of \$500 (including travel costs) must be written. The original approved contracts with all attachments must be sent to the Purchasing Department. A copy of the contract must be attached to the Banner Payment Authorization (BPA). If additional payments are necessary during the same fiscal year, the document number of the first payment should be referenced,

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as should the number of the payment (i.e., the third of five payments). A copy of the contract must be attached to the first BPA processed for each fiscal year. Forms required for payment of Contracted Services totaling less than \$10000 are:

1. Banner Payment Authorization (BPA) Original Contract Bid Tabulation form or Sole Source form
Departmental Purchase Order
2. Vendor invoice

VI. Payments to Nonresident Alien Contractors

- A. A nonresident alien contractor is an individual of a foreign country that performs independent personal services. Examples of these services might include a foreign guest speaker or a foreign language translator. To receive payment for these services, the individual must have a United States Social Security Number. If they do not have the required number, they must apply for one at the Social Security Office. The University is required to file IRS Form 1042S, Foreign Person's US Source Income Subject to Withholding, for services performed by all nonresident alien contractors. The University is also required to deduct a 30% withholding tax on all payments made to these contractors unless they qualify for a reduced rate or exemption under an applicable tax treaty. This can be determined by completing IRS Form 8233, Exemption from Withholding.