

PPM 204: Securing the Services of an Independent Contractor/Consultant

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Note: For links to referenced documents see Section VI,
Related Information below.

I. POLICY SUMMARY

- A.** This section of the Policy and Procedure Manual (PPM) for the University of California (UC) Agriculture and Natural Resources (UC ANR) describes how UC policy on the provision of services via Independent Consultant and Independent Contractor Agreements (BUS-43, *Purchases of Goods and Services; Supply Chain Management*) is implemented in the UC ANR environment.
1. This section does not apply to design professionals, facility planners, or engineers governed under the UC *Facilities Manual*, whose services are secured by UC ANR's Facilities Planning and Management.
- B.** As further explained below:
1. The provision of services (no matter the dollar amount) requires a formal Independent Consulting or Independent Contracting Agreement (ICA) coordinated through the Business Operations Center (BOC) and issued by UC Davis (UCD) Supply Chain Management, Procurement & Contracting Services.
 - a. Professional Services Agreements (PSAs) are used as a "blanket agreement" to contract with a consultant for a specific period of time. PSAs are processed by the BOC, similar to ICAs. UC ANR personnel that are unsure what form of agreement they require should contact the BOC to discuss their specific situation (contact information appears on page 1 above).
 2. The ICA must be fully-executed (signed by both parties) by the proper authorities **before** the work begins.
 3. UC ANR employees should never sign an ICA on behalf of UC (unless they have a formal, written Redelegating of Authority from the UC ANR Vice President to do so).
- C.** As described below, the process of issuing an ICA takes approximately eight weeks, assuming no complications. However, the information presented here is general, and cannot address all of the unique concerns that can arise regarding ICAs. Before the employee authorizes the start of any service work, they should direct questions regarding specific situations to the UC ANR Business Operations Center (BOC) noted on page 1 above.
- D.** This section of the PPM applies to all UC ANR employees, both academic appointees and staff.
- E.** This section of the PPM does not apply to Agriculture Experiment Station (AES) Specialists and/or any other academics affiliated with a UC campus. Academics that are affiliated with a campus should consult their campus departmental administration for information regarding ICAs.

II. DEFINITIONS

See BUS-43 for the definitive list. As used in this section of the PPM, three key terms have a working definition as follows.

Employer-employee relationship: A relationship wherein UC may control both the result of the work and the manner in which it is performed.

Independent Contractor: A relationship with a firm or individual not employed by UC, wherein UC may control only the result of the work, not the manner in which it is performed. Such relationships usually result in the delivery of specific, tangible products such as the issuance of a strategic plan, etc. Examples include training, drafting, technical editing, translation, maintenance and housekeeping, and farm labor.

Independent Consultant: A relationship with a firm or individual not employed by UC, wherein UC may control neither the result of the work, nor the manner in which it is performed. Such relationships usually result in the delivery of expert advice and opinions via a written or oral report, study or list of recommendations. Examples include reports, studies, evaluations and proposals.

III. POLICY TEXT

UC ANR will comply with all UC policies regarding ICAs, e.g., BUS-43, *Purchases of Goods and Services; Supply Chain Management*. Processes and procedures to do so are described below.

IV. COMPLIANCE/RESPONSIBILITIES

- A.** Different laws and regulations will apply depending on the nature of the relationship to be established. The determination regarding the kind of relationship proposed is made by the UCD Director – Supply Chain Management (or designee), after consultation with Human Resources if necessary. UCD Supply Chain Management – Procurement & Contracting Services will then issue the particular form of agreement (e.g., contractor or consultant) appropriate to that determination.
1. Determination that no employer-employee relationship would apply must be established before the proposed agreement can be executed.
 2. If an employer-employee relationship would be established, UC ANR must follow the normal employment process.
- B.** All independent contractor or consultant services will be properly pre-authorized, contracted and paid for in accordance with UC policy.
1. A written agreement is required anytime services are provided, money is exchanged, or a business relationship exists that poses potential liability to UC.
 2. Before allowing work to proceed, employees will ensure that an ICA has

been fully negotiated and signed by both UC and the contractor/consultant.

3. Persons making unauthorized commitments on behalf of UC may be held personally responsible.
- C.** Independent contractors/consultants will be used only when the services required are so urgent, special, temporary, or highly technical that they cannot be performed economically or satisfactorily by existing UC staff during the course of their normal UC responsibilities or duties.
- D.** The use of independent contractors/consultants will be infrequent and used primarily to solve clearly delineated problems. An independent contractor/consultant shall not be used to carry out a major portion of a program.
- E.** In the selection of a contractor/consultant, the furtherance of UC's business affirmative action programs will be considered to optimize opportunities for contracting with small business concerns owned and operated by socially and economically disadvantaged individuals or by women.
- F.** Conflict of Interest
- UC ANR employees must disqualify themselves from participating in a UC decision that may result in material financial gain to them; including decisions relating to contracting for the services of an independent contractor/consultant.
- G.** California Public Contract Code restricts the way UC does business with contractors, consultants, employees, and former employees.
1. Contractors/consultants who have performed work for UC cannot participate in subsequent projects relating to their findings.
 - a. If a multi-phase project is contemplated, such as a pilot to be followed by full implementation, **any agreement should cover all potential phases of the project** with appropriate language reserving final cost figures and UC's sole discretion to proceed or not with full implementation.
 2. Proposed contractors/consultants that are former UC employees may have an employee-vendor relationship. If an employee-vendor relationship exists, applicable policy must be followed.
 - a. A former UC employee cannot enter into a contract for one year from the date of separation to perform work on a contract if they were employed by that department in a policymaking position in the same general subject area as that contract.
 - b. A former UC employee cannot enter into a contract for two years from the date of separation to perform work related to contracts that were planned, negotiated, or executed by that employee.
 - c. Employees may not engage in any employment, activity or enterprise from which the employee receives compensation, or in which he or she has a financial interest, and that is sponsored or funded, in whole or in part, through a contract with UC.

- H. The services of an independent consultant shall not entitle the person to credit other than as a "consultant" in any published report or other document.

V. PROCEDURES

A. Approval of ICA Requests

1. Authority

Supervisors (UCCE County Directors, REC Directors, Statewide Program/Institute Directors and Service Unit Directors) have the authority to approve requests for issuance of ICAs. Requests originating from supervisors must be approved by the supervisor's supervisor.

2. Criteria

Supervisors will approve proposed ICA requests only if they meet all of the following criteria.

- a. The proposed scope of work will address a clearly delineated problem, the solution of which is necessary to UC ANR's programmatic and/or administrative operations and;
- b. The services required are so urgent, special, temporary, or highly technical that they cannot be performed economically or satisfactorily by existing UC staff during the course of their normal UC responsibilities or duties and;
- c. The ICA will be supported by an appropriate fund source having all of the following three characteristics:
 - i. The employee (and/or the employee's supervisor) has authority over the subject fund source;
 - ii. There is no restriction on the fund source prohibiting its use for the proposed scope of work; and
 - iii. The balance of the fund source is sufficient to fully support the entire cost of the proposed ICA.

B. Issuance and Processing of ICA Requests

1. Employees should prepare and forward to their supervisor a *Request for Purchase Order* form and should include and/or attach the following:
 - a. The clearly delineated problem to be addressed,
 - b. The proposed scope, location and cost of the work, including
 - i. A detailed description of the work to be performed, any desired approach to the problem, specific limitations, questions requiring answers, format for the completed report to be issued (if applicable), and the extent to which assistance and cooperation from UC will be available to the

- contractor/consultant (for help in writing a scope of work see UC Davis *Basic Requirements of a Scope of Work*),
- ii. **Any future work must be described in the original agreement** as there is a California Public Contract Code prohibition against “follow-on work.” Good contract management includes forecasting the entire length of a project and its associated costs so as to remain code-compliant.
 - iii. If it contains all necessary information, the detailed proposal from the contractor/consultant may be submitted as the scope of work.
- c. An explanation of the requirements for services that make them so urgent, special, temporary or highly technical that they cannot be performed by UC personnel,
 - d. If the services are to be performed in connection with a contract or grant, attach pertinent extracts of such contract or grant and the conditions set forth therein shall be considered a part of the request for the ICA,
 - e. A firm, established time schedule including the dates for commencement of performance, submission of progress reports, and completion of the service,
 - f. Detailed payment information, including rate(s) and/or budget and the extent (if any) to which progress payments will be made,
 - i. If the consulting work will exceed \$10,000 include three formal price quotes. (Reference the UCD *Bidding Guidelines for All Funding Sources* – link available in items VI., *Related Information* below.)
 - ii. When reviewing cost proposals, the lowest overall cost should be a driving factor. However, one contractor/consultant may charge a lower price per hour but may not have as much expertise as compared to another. If the lower-priced contractor/consultant will need three times as much time to provide their product, it might be better to award to the higher priced contractor/consultant with more relevant experience that will generate a recommendation more quickly. Therefore, selection of the contractor/consultant is based on qualifications, economy (cost) and resources, experience, and the needs of UC ANR.
 - g. A completed *Independent Contractor (Individual) Pre-Hire Information* form,
 - h. A completed *Sole Source Justification* form (if applicable), along with a completed *Individual Disclosure Statement for Proposed Sole*

Source Purchase form,

- i. A completed *Confirming Order/Unauthorized Purchase Justification* form (if work was begun before the agreement was executed),
 - j. A completed *Report of Proposed Transaction Involving Potential Conflict of Interest* form, (if the proposed contractor/consultant is a current employee or previous employee, or if the proposed contractor/consultant is a near relative).
2. If the supervisor approves the request for issuance of an ICA, they should sign the *Request for Purchase Order* form. The form along with all of the relevant attachments should then be forwarded to the BOC.
 3. The BOC will review the request. If there is a question as to whether the proposed relationship would be that of an employer-employee, the BOC will request guidance from UC ANR Human Resources.
 4. If the BOC has received all necessary information and there is no question of an employer-employee relationship, the BOC will initiate a Purchase Requisition (Req) or Purchase Agreement (PA) in the UCD Quali Financial System (KFS) to begin the process of setting up the ICA. The KFS document will then route to the UCD Procurement & Contracting Services unit or to the UCD Business & Revenue Contracts unit for review, bidding (if necessary), negotiation of terms and conditions, and final approval and issuance.
 - a. If the amount of payment by UC to a contractor/consultant is expected to be \$10,000 or more in any 12-month period and three price quotes were not submitted with the ICA request, UCD Procurement & Contracting Services will solicit proposals from three or more qualified independent contractors/consultants. When competitive proposals are not solicited, the reason for not seeking competition shall be documented and strong justification provided as to why it is necessary to contract with the selected contractor/consultant.
 - b. When bids are solicited, selection of the independent contractor/consultant shall be made on the basis of qualifications, economy (cost) and resources, experience, and the needs of UC ANR.

C. Issuance of the ICA, Execution of the Work and Payment

1. UCD Procurement & Contracting Services will write the ICA using UC's standard agreement, and will issue it to the proposed firm for their signature. Upon execution of the ICA, UCD Procurement & Contracting Services will send a copy of the fully-executed ICA to the BOC, and the BOC will send a copy to the requestor who may then release the contractor/consultant to proceed with the work. The ICA shall be fully-executed prior to the beginning of any service.

2. Payment for Services

- a. The contractor/consultant shall submit an invoice, setting forth the appropriate charges and indicating the ICA number and taxpayer reporting number, to the UC ANR employee to whom they report.
- b. Payment shall be made in accordance with the schedule set forth in the ICA.
 - i. In case of termination prior to completion of the work to be performed under the ICA, a determination shall be made of an equitable compensation to be paid for the work completed based on its value to UC ANR, provided that such compensation shall in no event exceed the total ICA price.
 - ii. Final payment will be withheld until evidence is received by the BOC that the terms of the ICA have been completed. This evidence must take the form of a final report or a memo attesting to completion signed by both the contractor/consultant and the UC ANR employee to whom they have reported.

3. Changes to the ICA

If changes are necessary after an ICA is executed, the supervisor will so advise the BOC. Changes may include but are not limited to an extension of the termination date, an expansion of the scope of work, or a modification of the payment amount. Following supervisor and BOC approval of the proposed change(s), the BOC will initiate an amendment request in KFS, documenting the reason(s) for the changes. The UCD Business and Revenue Contracts unit will then issue a formal amendment to the ICA.

4. Completion of the ICA

Services may not continue beyond the ICA expiration date.

VI. RELATED INFORMATION

- [UC Office of the President Business and Finance Bulletin No. BUS-43, *Purchases of Goods and Services; Supply Chain Management*](#)
- [UC Office of the President *Facilities Manual*](#)
- [UC ANR Facilities Planning and Management](#)
- [UC Davis Policy and Procedure Manual Chapter 330, Section 05, *Business & Revenue Contracts*](#)

- [UC Davis Policy and Procedure Manual Chapter 380, Section 70, *Consultant Agreements*](#)
- [UC Davis Policy and Procedure Manual Chapter 380, Section 71, *Independent Contractor Agreements*](#)
- [UC Davis Bidding Guidelines for All Fund Sources](#)
- [UC Davis Basic Requirements of a Scope of Work](#)
- [UC Davis Independent Contractor \(Individual\) Pre-Hire Information Form](#)
- [UC Davis Sole Source Justification Form](#)
- [UC Davis Individual Disclosure Statement for Proposed Sole Source Purchase Form](#)
- [UC Davis Report of Proposed Transaction Involving Potential Conflict of Interest Form](#)
- [UC ANR Request for Purchase Order Form](#)
- [UC ANR Confirming Order/Unauthorized Purchase Justification Form](#)

VII. FREQUENTLY ASKED QUESTIONS

Not used.

VIII. REVISION HISTORY

July 28, 2017:

Policy format updated.

July 27, 2020:

Revised for clarity, added content and general updates.

June 2022:

Personnel updated.