FASOM - Section 13.06: Purchasing - Independent Contractor

Section 13.06: Purchasing -- Independent Contractor

The content of this policy is current, although it has not yet been transitioned to the new Fiscal Policy format. This will be accomplished as time and resources permit.


07/28/06: Two bullet items, section F[3], deleted (PERS references).

A. Policy

[1] General

When OUS employees cannot perform needed personal services, institutions should obtain the services from employees of other state agencies through interagency service agreements. If such arrangements are impractical, independent contractors may provide needed services.

[2] Circumstances for Contracting

An institution may contract with an "outside" source for personal services when:

- Special skills, knowledge and resources are unavailable within OUS.
- OUS employees cannot complete the work in a reasonable time.
- A situation requires independent, impartial evaluation by a consultant with recognized professional expertise and stature.
- It will be less expensive to contract for the work.

B. Contracting for Personal Services

[1] General

Circumstances may require special skills for a limited time. Those skills may be unavailable from current employees or prospective temporary employees. Under such circumstances, an institution may either enter into an interagency service agreement or contract with an independent contractor.

[2] Interagency Service Agreement (OAR 122-20-015 (5))

Agreements with other state agencies for personal services must be written. They must describe the services, identify reporting requirements, indicate beginning and ending dates, and list total
costs. Interagency service agreements are approved by the institutional contracting officer or the
contracting officer's delegate. A copy of the agreement must be filed with the Department of
Administrative Services' Budget and Management Division.

Note: Such agreements are exempt from other approval and reporting requirements of this
section.

[3] Contract for Student-Teacher or Student-Intern Supervision

Contracts for student-teacher or student-intern supervision must be approved by the institution's
Dean or Vice President of Administration/Finance.

Note: Such contracts are exempt from other approval and reporting requirements of this
section.


Skills needed for limited or intermittent periods may be obtained from an independent contractor
when other means are impractical. The contractor must meet the criteria in FASOM 13.06B[5].
If the criteria are unmet, the individual must be paid through the Payroll System.

Note: A PERS member or other government employee may be ineligible for independent
contractor status (see FASOM 13.06F).

[5] Definition of Independent Contractor (ORS 670.600)

To be considered an independent contractor, an individual or business should meet a substantial
portion of the criteria listed below. Unmet criteria must be explained in the contract's Statement
of Justification.

• The individual or business is free from direction and control over the means and manner of
  providing the services. (Only the person for whom the services are provided may specify the
  desired results.)
• The individual or business is responsible for obtaining all registrations or licenses required by
  state law or local ordinances to conduct the business.
• The individual or business furnishes the tools or equipment necessary for fulfillment of the
  contract.
• The individual or business has authority to hire and fire employees to perform the services.
• Payment is made upon completion of specific portions of the project or is made on the basis of a
  periodic retainer.
• The individual business or is registered under ORS Chapter 701 -- if the individual or business
  provides services for which such registration is required.
• Federal and state income tax returns in the business's name, a business Schedule C, or farm
  Schedule F were filed as part of the personal income tax return for the previous year -- if the
  individual or business performed labor or services as an independent contractor in the previous
  year.
The individual or business represents to the public that the services are to be provided by an independently established business. An individual or business is considered to be engaged in an independently established business when four or more of the following circumstances exist:

- The services are carried out primarily at a location separate from the residence of an individual who performs them or are carried out primarily in a portion of the residence set aside as the business's location.
- Commercial advertising or business cards -- if customary in operating similar businesses -- are purchased for the business, or the individual or business has a trade association membership
- The business's telephone service is separate from the personal telephone service of the individual who performs the labor or services.
- Labor or services are performed only pursuant to written contracts.
- Labor or services are performed for two or more different persons within a period of one year.
- The individual or business assumes financial responsibility for defective workmanship or for service not provided. The following are evidence of such responsibility: ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the services provided.

Note: Some of the above criteria may not apply when an individual or business files a Schedule F as part of a personal income tax return, and the individual or business performs farm labor or services reportable on a Schedule C.

It is important to consider carefully whether an individual qualifies as an independent contractor. If the IRS reclassifies an individual from an independent contractor to an employee, the institution may be required to pay certain amounts of the employment tax liability not withheld because of the misclassification.

If failure to withhold taxes was due to intentional disregard of the withholding requirement -- rather than a good-faith misclassification -- the IRS may impose more stringent penalties.


An independent contractor provides services beyond those that can be performed by any competent worker in that business or profession. Contracts to provide personal services would be appropriate for the following:

- Recognized artists performing musical recitals or providing other services in the performing or fine arts field
- Persons who perform -- in their own homes -- services relating to a particular talent or training
• Architects, engineers, land-use planners, appraisers, surveyors and others who offer their professional services to the public
• Lecturers and consultants
• Aircraft pilots and boat operators when the contract is for a single trip or series of trips

Note: If no written contract exists, the contractors will be considered employees to the extent of the value of their services, excluding the rental value of the equipment.
• Individuals who provide gratuitous services and are reimbursed for their travel expenses
• Other specialized, creative, education- or research-oriented services of a non-commercial nature

[7] Contracts That Are Not Personal/Professional Services Contracts (OAR 127-10-092)

The following types of services cannot be obtained from independent contractors as Personal/Professional Service Contracts:

• Contracts primarily for tangible products, even if professional services are needed to design or install the products
• Contracts for services that generally can be performed by any competent worker in that field
• Contracts for services of a trade-related activity. A Purchase Order or Purchase Request is required (see FASOM 13.02).

[8] Contracts With Prospective Employees

Prospective employees may be paid a fee for professional services performed. They may also be reimbursed for travel expenses. They may, in some cases, provide the services gratuitously and be paid only for their travel expenses. Personal/Professional Services Contracts may be used to contract for the services and arrange payment in all of these situations, with one exception: A Travel Reimbursement Request should be used when paying only for travel expenses (see FASOM 11.01E). Prior approval of the institution's executive is required for any travel expense reimbursement.

Note: Travel expenses are reimbursed at in-state rates (see FASOM 11).

[9] Contracting For Employee Training

Before contracting for employee training, institutions should request information on the following from the Training Unit of the Executive Department's Personnel Division:

• Training courses conducted by the state that may satisfy the identified needs
• The prevailing and reasonable cost of the type of training needed

The following information should be included on the Personal/Professional Services Contract for employee training:

• Number of hours of training
• Number of employees to receive training
• Instructor cost per hour
• Who pays for overhead costs such as materials, books, training rooms, audio/visual equipment and instructor travel

C. Documenting Contracts With Independent Contractors

[1] General

Documentation should support a decision that an independent contractor will best provide a service. It should also justify the contractor's selection. A Tax Identification Number is required before payment can be made.

Note: Such documentation should be retained for three years.

[2] Competitive Selection

Independent contractor services are usually procured through negotiations with potential suppliers, and the process must be as competitive as possible. Institutions must maintain procurement records that justify the contractor's selection and the negotiated cost (see FASOM 13.06C[5] and 13.06C[6]).

[3] Personal/Professional Services Contract (Form CO-190)

A Personal/Professional Services Contract must be used by an institution to obtain and pay for services from an independent contractor. The contract is also needed to reimburse the contractor for travel expenses related to these services. When payment is for travel expenses only, a Travel Reimbursement Request is used (see FASOM 11.01E).

[4] Approval

All Personal/Professional Services Contracts must be signed and approved before services are rendered.

[5] Contractor Selection Documentation for Contracts up to $2,500

A Justification, Informal Bid and Contractor Selection Statement is required for contracts up to $2,500. The statement is processed in accordance with page 2 and appendix K of the OUS Contracting, Leasing, and Licensing Manual.


When the total payment on an agreement will exceed $2,500 during a fiscal-year, the contractor should be selected by competitive bidding when practical. Documentation should include the following:

• A Justification, Informal Bid and Contractor Selection Statement (see FASOM 13.06C[5].)
• Descriptions of (1) the method used to advertise the proposal or notify prospective contractors
  (2) any direct negotiations and (3) results
• A copy of the request for proposal
• A copy of each proposal received

D. Approval of Personal/Professional Services Contracts

[1] General

Personal/Professional Services Contracts must be signed by an institution representative who is authorized in writing to approve such requests (e.g., the Vice President of Administration/Finance, Director of Business Affairs or Business Manager). The following paragraphs indicate approvals required for various contracts. Approval is required before work begins.

[2] Amendments to Contracts

An amendment that increases a contract's payment amount requires prior approval. If the amendment causes the total payment to exceed the limits stated in FASOM 13.06D[7], Executive Department approval is required. If the amendment causes the total payment to exceed $2,500 for the fiscal year, additional justification is required in accordance with FASOM 13.06C[6].

[3] Contracts Over $25,000

Before any service may be performed, the Assistant Attorney General for OUS must review and approve any contract when the total fiscal-year payment will exceed $25,000.

[4] Contracts for Architectural and Engineering Services (Department of General Services Policy 125-3-290 and IMD 7.150)

Contracts for professional architectural and engineering services and supplements to such contracts are negotiated and executed by the Office of Facilities Planning. Contracts exceeding $10,000 must also be approved by the Department of Administrative Services' Purchasing Division.

[5] Contracts With Prospective Employees

Institution executive approval is required for travel expense reimbursement (see FASOM 13.06B[8]).

[6] Contracts for Supervision of Student Teachers or Student Interns

All such contracts must be approved by the institution's Dean or Vice President of Administration/Finance.
Institution contracting officers are authorized to approve the following contracts (subject to FASOM 13.06D[3] through 13.06D[6]):

- Contracts paid from funds not under expenditure limitation
- Contracts for education and research
- Non-education, non-research contracts involving payment up to $1,000 from funds under expenditure limitation

Note: In this last case, authority is limited to $2,000 per fiscal year for multiple contracts with one contractor.

Prior approval by the Executive Department's Budget and Management Division or Data Services Division must be given for non-education, non-research data processing services contracts involving payment exceeding $1,000 from funds under expenditure limitation. Such approval is also required when multiple contracts of $1,000 or less will amount to payments over $2,000 to one contractor in a fiscal year.

Personal/Professional Services Contracts sent to the Executive Department for approval must have the following attachments:

- A Justification, Informal Bid and Contractor Selection Statement
- A Personal Service Contract Monthly Input Form
- Other applicable documentation for contracts over $2,500 (see FASOM 13.06C[6])

E. Monthly Reports of Personal/Professional Services Contracts

All Personal/Professional Service Contracts paid from funds under expenditure limitation -- except contracts for student-teacher or student-intern supervision -- must be reported to the Executive Department's Budget and Management Division.

Note: Contracts paid from funds not under expenditure limitation are exempt from such reporting.
Contracts and amendments must be reported to the Executive Department's Budget and Management Division by the 10th of the month following the month they were approved. Contracts and amendments approved by the Budget and Management Division are submitted with report forms attached. They should be omitted from the monthly report. The following contracts and amendments paid from funds under expenditure limitation are subject to monthly reporting:

- Contracts for education and research
- Non-education, non-research contracts under $1,000
- Contracts for data processing services

In the monthly report to the Executive Department's Budget and Management Division, the following documents should be included for each contract:

- A copy of the Personal/Professional Services Contract
- A Personnel Service Contract Monthly Input Form
- A Justification, Informal Bid and Contractor Selection Statement
- Other applicable documentation for contracts over $2,500 (see FASOM 13.06C[6]).

F. Persons Ineligible for Independent Contractor Status

[1] General

A person may be ineligible for independent contractor consideration even if the criteria in FASOM 13.06B[5] are satisfied.


In general, the contractor may not be an OUS employee. An employee of one institution whose services are used by another institution is reimbursed through the Payroll System. However, situations do exist in which an OUS employee provides personal services to an OUS institution. Such an arrangement may only be allowed when the services the individual performs as an independent contractor vary significantly from those the individual performs as an employee. In all such cases, the Controller's Division must be consulted before granting the individual independent contractor status.

[3] State or Local Government Employee

The services of a state (non-OUS) or local government employee may be obtained through one of the following methods:
• By entering into an interagency service agreement with the employee's primary agency

Note: The employee is paid by his primary agency and is not an independent contractor. No Executive Department approval is needed, but a copy of the agreement must be filed with the Budget and Management Division in accordance with OAR 122-20-015 (5).

[4] Exceptions

Exceptions to the first two methods above may be granted by the institution's Dean or Vice President of Administration/Finance. Such an exception may be granted when two conditions are satisfied:

1. Entering into an interagency service agreement or placing the individual on the payroll is impractical and
2. The work will be done on the consultant's own time.


The contractor must not be a federal employee if any part of the services is financed by funds received from federal sources.