

Performing the Service Provider Evaluation

The purpose of the service provider evaluation is to determine whether to appoint a service provider as an independent contractor or as an employee paid through payroll. The IRS asserts that if Cornell exercises control over the service provider, the individual should be appointed as an employee.

There are risks and costs associated with each classification of the service provider. For *employees*, there are the employer's share of FICA tax, employee benefits, workers compensation and other insurance coverage, overtime premiums, etc. For *independent contractors*, there are contract costs as well as potential penalties and interest from the IRS and other regulatory agencies if the agency, during its review, reclassifies the independent contractor as an employee.

The unit engaging the service provider has **primary responsibility** for independent contractor review. The unit may be held financially responsible for any taxes, interest, penalties, judgments, or awards due to misclassification.

To determine whether a service provider is an independent contractor or an employee under common law, you must examine the relationship between the worker and the business. All evidence of control and independence in this relationship should be considered. If Cornell exercises control over the service provider, the individual should be appointed as an employee. The factors that provide evidence of "control" fall into three categories – Behavioral Control, Financial Control, and the Nature of the Relationship itself.

- *Behavioral Control* generally reflects that the organization exercises control over the service provider's activities. If Cornell provides training and/or instructions about how to complete the task, the service provider should generally be classified as an employee. In contrast, independent contractors determine how they will accomplish the task.
- *Financial Control* generally reflects that the service provider is not at risk for financial loss on a contract because the organization provides the equipment, reimburses the business expenses and pays on an hourly basis rather than a negotiated fee for specific deliverables.
- *Relationship Control* generally reflects that the service provider works primarily for the organization and anticipates a continuing relationship. An independent contractor has a broad customer base and is free to work when, for whom, and for as many firms as he/she chooses.

A worksheet is available to assist the unit in completing the evaluation of Behavioral Control, Financial Control and Nature of the Relationship. See the [Service Provider Evaluation Worksheet](#).

Procedure for Performing the Service Provider Evaluation

◆ **Note:** The BSC may assume all or part of the tasks outlined below for the unit. Contact your BSC for their specific procedures.

1. The unit engaging the service provider will send the [Service Provider Questionnaire](#) to the service provider for completion (see the [Forms section](#) of the Procurement and Payment Services' Website) and request its return directly to the unit.
2. After receiving the completed [Service Provider Questionnaire](#), the unit will complete Cornell's [Service Provider Evaluation Worksheet](#) to determine whether "control" over the service provider exists, as described on the previous page. Remember to attach both the [Service Provider Questionnaire](#) and the [Service Provider Evaluation Worksheet](#) to the requisition or I Want document. (See the [Forms section](#) of the [Procurement Services' Website](#).)

Buying Manual

Subject: Purchases with Special Procedures: Paying for Services

Title: Performing the Service Provider Evaluation

Number: 701

Issued: February 9, 2009

Revised: October 13, 2020

◆ **Caution:** The unit must review the service provider's classification **prior** to entering into an initial contract or renewing a contract. The unit should make its own determination and not rely on another unit's determination.

3. If the unit concludes that the service provider should be classified as an *employee*, the unit will request appointment of the individual as an employee through the Office of Human Resources (see your BSC for further instructions).
 - a. The unit may engage the service provider through a temporary employment agency. Contact the Office of [Workforce Recruitment and Retention](#).
4. **If the unit concludes that the service provider should be classified as an independent contractor, the unit will:**
 - a. Document the resolution of any conflict of interest and/or commitment identified during IC evaluation process. See the [University Policy 4.14, Conflicts of Interest and Commitment](#) for more information.
 - b. Evaluate the need for insurance. Requirements for insurance coverage are outlined in the [Section 405, Insurance Requirements](#) section of this manual; contact Risk Management and Insurance with questions on insurance requirements. ◆Note: Procurement will contact the service provider and request proof of insurance; contact Procurement to request this assistance.
 - c. Determine the terms of the agreement with the service provider, such as the scope of work or deliverables, acceptance criteria, identification of who will provide the services, etc. These terms are most easily defined through completion of the [Independent Contractor/Consultant Agreement](#) form (see the [Forms section](#) of the Procurement Web site.) Contact Procurement with questions on these terms, which are in addition to the standard terms and conditions of Cornell's purchase order.
 - d. Request the issuance of a purchase order through the BSC and submit to the BSC the [Service Provider Questionnaire](#), the [Service Provider Evaluation Worksheet](#), conflict of interest/commitment resolution (if applicable) and [Independent Contractor/Consultant Agreement](#). ◆Note: The Service Provider Evaluation Worksheet requires the name, title and signature of the unit-level individual that performed the service provider evaluation.

Other Considerations with Independent Contractors:

Billing and Tax

All business expenses that the unit has agreed to pay must be submitted as a component of the vendor's invoice. Do not process an expense/travel reimbursement for the independent contractor. Do not submit individual expense receipts with the invoice. In accordance with IRS regulations, the university will report all payments to independent contractors totaling \$600 or more during a calendar year on IRS form 1099-NEC.

The independent contractor is responsible for all estimated tax payments and other tax filing requirements; all tax records, including original business receipts; general liability and other insurance coverage for workers who work on his/her contract with Cornell; medical insurance, personal accident insurance, pension plan, or other benefits, whether personal or extended to his/her employees.

Inquiries by Government Agencies

All inquiries made directly to the unit by a government agency about independent contractors must be directed to the Tax Manager in the Division of Financial Affairs. Do not respond to these inquiries at the unit level.