Frequently Asked Questions about the Independent Contractor Policy

1. **Q:** What is the reason for this policy?
   
   **A:** IRS and common law govern designation of independent contractor status. Significant tax penalties and loss of federal awards exist for incorrect classification of an employee as an independent contractor. In addition, contracting with an independent contractor may expose the College to significant risk. Finally, the competitive quoting process fulfills the College’s social responsibility in providing an equitable process allowing qualified service providers to compete to provide services to the College. Furthermore, it is through the competitive quoting process that the College procures high quality services for a fair price.

   Therefore it is imperative that common standards are applied in classification and contracting, and that each case is fully documented and auditable.

2. **Q:** What is mandatory (required by regulation)?
   
   **A:** The IRS and federal funding agencies require that policies and procedures be in place that determine independent contractor v. employee status and that all independent contractors complete IRS information Form W-9. In addition to TC requirements, institutions receiving Federal Awards must also adhere to federal regulations.

3. **Q:** What are the TC highly recommended (not required by regulations) procedures? Why are they being recommended?
   
   **A:** First, if an independent contractor will be engaging in activities that expose the College to significant risk it is in the College’s best interest that the service providers procure insurance to guard against possible losses. Second, it is highly recommended that a competitive quoting process be used wherever feasible regardless of the amount (i.e., $10,000 threshold). Studies show that the competitive process yields 10% to 15% savings. Furthermore, the competitive quoting process fulfills the College’s social responsibility in providing an equitable process allowing qualified service providers to compete to provide services to the College.

4. **Q:** What are the consequences if we do not comply with the regulations?
   
   **A:** Significant tax penalties and loss of federal awards exist for incorrect classification of an employee as an independent contractor.

5. **Q:** What do other Colleges and Universities do?
   
   **A:** All the Colleges and Universities that were surveyed (Brown, Columbia, Cornell, Dartmouth, Harvard, NYU, Princeton, Penn and Yale) have an independent contractor
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policy or were in the process of implementing independent contractor policy and procedures. The TC policy contains the ‘best elements’ of the policies and procedures from the surveyed Colleges and Universities, with accommodations made where necessary, to address the specialized needs of the TC community.

6. **Q:** Why must the requestor complete the ‘Request for Independent Contractor Approval’ forms?

**A:** First, the form needs to be completed in order to determine whether the independent contractor is eligible to work for the College as an independent contractor pursuant to IRS guidelines. Second, the attachments to the ‘Request for Independent Contractor Approval’ provide the requisite information to create a contract/agreement (if required) and determine if the proper competitive quoting process (if required) was used - as is required under federal regulations.

7. **Q:** Approximately how long does it take for the requestor to complete the ‘Request for Independent Contractor Approval’ forms?

**A:** Provided the requestor has all the required information from the independent contractor to complete the forms as well as a formal agreement (if required) and the requestor is familiar with the policy, it will take approximately fifteen minutes to complete the ‘Request for Independent Contractor Approval’ forms and attachments. As staff becomes more familiar with the policy and the forms, that time will decrease.

8. **Q:** Does the independent contractor complete any forms?

**A:** If the ‘Request for Independent Contractor Approval’ is approved, the independent contractor must submit a completed IRS W-9 form, as required by IRS regulations, to the Accounts Payable department.

9. **Q:** This represents a big change from the way we currently procure and pay independent contractors. When will the policy be effective? How will you communicate to the TC community the new policy and required procedures? How will the Administration assist requesting departments in adhering to the new policy and procedures?

**A:** The independent contractor policy will be effective August 1, 2002. However, there will be a transition period from April, 2002 to July 31, 2002. A general email was distributed to the faculty, chairs, department heads and department associates introducing the independent contractor policy and procedures. Also the policy, procedures and forms have been posted on the Controller’s website. The procurement and payment process (P3) team will also hold informational and training sessions to assist requesting departments adhere to the new policy and procedures.
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10. Q. Will the requesting department retain personal quality decisions?

   A: Yes. In all cases the decision – in regards to quality - on the procurement of independent contractor services will rest with the requesting department. The purchasing department plays a support role that can assist the requesting department prepare proposals, solicit and evaluate bids, etc.

11. Q: In what circumstances is insurance required?

   A: Insurance will be required in all cases except where the contract manager, in consultation with the risk manager, determine that the exposure to the College is minimal.

12. Q: The independent contractor refuses to purchase insurance for project(s) the contract manager and risk manager have identified as posing significant risk to the College. What happens then?

   A: The risk manager will communicate with the independent contractor as to why the insurance is required and if need be, put the independent contractor in touch with an insurance broker to procure insurance. If the independent contractor still refuses to procure insurance, the College should not do business with the independent contractor.

13. Q: Competitive quoting sounds like a good idea for commodities, but for unique services like consulting services why is it recommended?

   A: First, not all consulting services are unique and some projects can be competitively bid. Sound business practices maintain a competitive quoting process. Studies show that the competitive process yields 10% to 15% savings. Second, the competitive quoting process fulfills the College’s social responsibility in providing an equitable process allowing qualified service providers to compete to provide services to the College. In addition, for institutions receiving federal awards, regulations (OMB Circulars) require that “all procurement transactions be conducted in a manner to provide to the maximum extent practical, open and free competition.” The College must maintain documentation for all procurements exceeding $10,000.

14. Q: When are agreements (contracts) required?

   A: Contracts are required for all consulting projects of $3,000 or more and may be required for projects less than $3,000, depending on the work being performed.

15. Q: Why are agreements (contracts) required?

   A: Agreements are required in order to protect the interests of the College, by ensuring that the independent contractor fulfills his/her obligations under the agreement. Furthermore, agreements are required for federally funded projects per federal regulations.
16. Q: May an independent contractor begin to perform services before an agreement is executed?

A: No. Without an executed agreement the independent contractor will be working without agreeing to the terms and conditions set forth by the College. An independent contractor who provides services without agreeing to terms and conditions places the College at risk (non-performance, etc.)

17. Q: What is required for all consulting projects?

A: All consulting projects can simply be initiated by completing the Request for Independent Contractor Approval form. Based on the Scope of Work in the attached package, the Purchasing Contract Manager, in conjunction with the Risk Manager, will decide the level of risk and the appropriate paperwork required. Check requests will no longer be honored for consulting services, except as specified in the policy (i.e., honorariums, human subject fees, etc.).

18. Q: Why is the Request for Independent Contractor Approval form being required as opposed to check requests for consulting projects?

A: The processing of a Request for Independent Contractor Approval form for consulting projects ensures that budgets have been allocated to cover the expected costs. Check requests typically are processed after the services have been performed and the budget dollars may not be available to cover the costs. In addition, our auditors noted this condition in the Management Letter to the Business and Finance Committee of the Trustees. The Business and Finance Committee of the Trustees expect a resolution to this condition.