

Effective: 03/15/1991

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Review Date: TBD

Issuing Office: [Procurement & Contracts](#)

RETAINMENT OF INDIVIDUALS AS INDEPENDENT CONTRACTORS

I. RELATED POLICIES

A. Systemwide Business and Finance Bulletin (BFB)

[BUS 43](#) Materiel Management

B. UCSD Policy and Procedure Manual (PPM)

[200-13](#) Conflict of Interest

[230](#) Personnel-Academic

[250](#) Personnel-Staff

250-6 Student Employment Under Staff Titles

[523-9](#) Employee Vendor Relationships

[523-10.1](#) Independent Consultants

[523-10.3](#) Temporary Personnel from Outside Agencies

II. DEFINITIONS

A. Independent Contractors

Independent contractors are any persons engaged by the University (on a casual labor basis) to render service for a specified recompense and for a specified result, under control of the University as to the result of their work only and not as to the means by which such result is accomplished.

Independent contractors, as defined above, do not operate under a business license or federal employer identification number (F.E.I.N.). If an individual operates under a business license or R.E.I.N., they then would be defined as a business, not an independent contractor.

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B. Employer-Employee Relationship

An employer-employee relationship exists when the University has the right (whether or not it exercises the right) to supervise and control the manner of performance, as well as the result of the service.

C. Employees Acting as Independent Contractors

Employees may only be retained as an independent contractor if the following conditions exist:

1. The work to be performed as an independent contractor is not the same as, or similar to, that performed in the scope of the employee's assigned and/or implied duties as a UC employee and same is certified by the employee's department chair or designated administrator.
2. A memorandum from the head of the department which employs the individual is submitted with the *Purchase Order Requisition* (POR) and clearly states the employee's scope of work within the department and states that the time to be dedicated as an independent contractor does not interfere with their normal scheduled responsibilities.
3. The form for *Purchase of Goods or Services from a UCSD Employee or Near Relative*, as found in PPM 523-9, is completed properly and submitted with the POR.
4. Prior employees of the University, if terminated within the past two years, are to be considered as University employees and must complete the form *Purchase of Goods or Services from a UCSD Employee or Near Relative*.

III. POLICY

- A. Departments may retain individuals for services via *Purchase Order* provided that no employer-employee relationship will exist. University purchasing procedures are not to be used in lieu of placing an individual on the payroll. Failure to observe this policy could result in penalties for violation of State and Federal laws and/or University policies such as:

1. State Oath of Allegiance as required by the California Constitution and California Government Code Sections.

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2. State Worker's Compensation Laws.
3. Federal laws pertaining to the employment of aliens.
4. State laws affecting employment of individuals under age 18.
5. Internal Revenue Code regarding payroll taxes. (Social Security coverage).
6. By-Laws and Standing Orders of The Regents - maximum age laws.
7. By-Laws and Standing Orders of The Regents - salary deductions and contributions towards retirement.

It is important to note that, in addition to normal penalties for violation of State and Federal laws and actions resulting from non-observance of University regulations, failure to use University employment procedures when applicable can also result in loss of reimbursement under Federal contract and grant funds. Further, the University receives State funds only after certification by University officials that all employees have been hired under the provisions of the State law.

- B.** If an employer-employee relationship will exist as a result of retaining an individual to perform services, then the individual must be employed in the regular manner through the Campus Personnel Office. (See PPM Sections 230-250).
- C.** Criteria to assist departments in determining whether or not an employer-employee relationship exists follows:
 1. Some indications that a worker is an employee are:
 - a. The department can terminate the worker;
 - b. The department furnishes tools, equipment and/or a place to work;
 - c. The worker receives training from a department representative or is required to follow department instructions; and/or
 - d. The department sets the hours of work or restricts the worker from doing work for others.

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- e. The department allocates interdepartmental projects to the independent contractor that were not included in the original approved POR.
 - f. The worker does not offer the same services to the general public.
 - g. The worker does not receive income for same or similar services from other clients.
2. Some factors which indicate that workers are self-employed, responsible for their own payment of payroll taxes, and otherwise eligible to furnish services via purchase order as independent contractors:
- a. The independent contractor makes a profit or suffers a loss;
 - b. The independent contractor works for a number of persons or firms at the same time;
 - c. Independent contractors advertise to the general public that they are available to perform services; and/or
 - d. Independent Contractors pay their own expenses and have their own equipment and workplace;
 - e. Both parties agree that the individual performing the service is acting as an independent contractor and that the issuance of a purchase order in no way implies that the independent contractor is, or will be, considered as an employee of the University at the present time or in the future.

IV. PROCEDURES

A. Services of Independent Contractors

In order to engage the services of an independent contractor, the originating office prepares a *Purchase Requisition, Exhibit A*, prior to the commencement of services requested and forwards it to the Purchasing Division, Materiel Management, 0026.

1. *All Requisitions* must contain the following information (see Exhibit A).

PURCHASING

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- a. Name and Social Security Number of the individual requested to perform the service.
- b. Description of services to be performed in reasonable detail.
- c. Where work will be performed.
- d. When work will be performed.
- e. Whether University supplies or equipment will be used.
- f. Amount of payment requested by the independent contractor and the method of its computation, i.e., by the hour, day, or job. Number of hours and days should be included, if applicable.
- g. A total "Not To Exceed" dollar amount.
- h. Whether or not the individual is presently employed by the University (regardless of campus/medical center, etc., location) or was separated from employment by the University within the last two years. If separated from the University within the last two years, termination date must be shown.
- i. Whether the individual is related to a University employee and relationship to that employee.
- j. Whether or not an employee-employer relationship will exist between the proposed independent contractor and UCSD, per definitions in Paragraph II.B. above.
- k. Whether the individual is an alien and, if so list the country of origin, type of visa, visa number and/or copy of same.

B. Services of Independent Contract In An Amount of \$10,000 Or More

1. If payment to an independent contractor is expected to be in an amount of \$10,000 or more, the format shown in *Exhibit A* above and narrated in IV.A. above will be followed, except that the names of three (3) or more individuals acceptable to the originating office will be furnished by attachment to *Exhibit A* for

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competitive bid purposes by the Purchasing Division; or if preferred by the originating office, Purchasing will develop a bid list from known sources. In either case, it is required that the originating office submit the scope of service to be performed in detail.

2. Exceptions to the above requirement must be fully and completely justified in the same manner as for sole source purchases of supplies and equipment. (Reference PPM 523-2 IV.C.2.).
- C.** The Purchasing Division reviews, negotiates price, terms and conditions, obtains releases in lieu of Worker's Compensation Insurance if services are to be performed on University premises, and makes an award. If there appears to be an employer-employee relationship, Purchasing shall refer the matter to the Campus Personnel Office for final determination.
- D.** Upon completion of the job, or at stated intervals provided in the Purchase Order, payment will be made by the submission of invoices to the Accounting Office by the Independent Contractor. Invoices should be in duplicate and contain the following information:
1. *Purchase Order* number.
 2. Taxpayer reporting/Social Security number.
 3. Remit to address.
 4. Payment terms, i.e., Net 15 Days.
 5. Description of service.
 6. Period of performance.
 7. Unit price and extension.
 8. If invoice is a progress billing, so state.

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V. RESPONSIBILITY

A. Originating Office

1. Completes checklist for obtaining services of an Independent Contractor and submits with the POR.
2. Prepares a *Purchase Order Requisition, Exhibit A*, and necessary documentation for submission to the Purchasing Division, allowing for sufficient time for documents to be submitted to the independent contractor by the Purchasing Division and to be returned by the independent contractor to the Purchasing Division. (Usually three (3) weeks).
3. **Makes no commitment** for services until a formal purchase order has been issued by the Purchasing Division.

B. Purchasing Division

1. *Reviews Purchase Requisition* and attached checklist to insure compliance with policy.
2. When applicable, consults with appropriate personnel office for employer-employee relationship determination.
3. Negotiates price, terms, and conditions with prospective independent contractors when deemed necessary.
4. Sends required documentation to independent contractor for completion and return to the Purchasing Division.
5. Issues Purchase Order and advises requesting department and/or independent contractor of approval or denial.
6. Maintains information log on all independent contractors and makes available same information to originating departments on an "as requested" basis.

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EXHIBIT A

UCSD 04/85

IT IS UNDERSTOOD THAT THE PERSON APPROVING THIS ORDER HAS THE PROPER AUTHORITY TO DO SO AND THAT FUNDING INDICATED IS AVAILABLE

<input checked="" type="checkbox"/> POR		<input type="checkbox"/> SUB-ORDER		<input type="checkbox"/> LVPO		SUGGESTED VENDOR Name of independent contractor & Soc. Sec. No. Street Address, City, State & Zip Code Telephone Number (if known)													
REQUISITION DATE 9/28/88		REQUISITION NUMBER B 39132		FUNDING SOURCE (SEE INSTRUCTIONS) UNIVERSITY OF CALIFORNIA - SAN DIEGO FUNDING SOURCE (SEE INSTRUCTIONS) FUNDING SOURCE (SEE INSTRUCTIONS)															
DEPARTMENT Environ. Engr.		MAIL CITY Z-009		DEPARTMENT PHONE 45311		L		ACCOUNT		FUND		SUB		OBJECT		DO		AMOUNT	
DATE NEEDED See Below		COST NOT TO EXCEED (OPTIONAL)		SEND P.O. COPY TO J. Doe		MAIL CODE Z-009		6		XXXXXX		19900		3					
DEPARTMENT AUTHORIZED SIGNATURE Jane Doe		DATE 9/28/88		GRANT CONTRACT NUMBER															
SIGNATURE		PHONE NO. 45311		TAXABLE <input type="checkbox"/>		REBATE <input type="checkbox"/>		NON-TAXABLE <input checked="" type="checkbox"/>		ORDER NUMBER									

UNIVERSITY OF CALIFORNIA, SAN DIEGO
PURCHASE REQUISITION

VENDOR NAME AND ADDRESS:

SHIP TO →

VENDOR: UNIVERSITY OF CALIFORNIA, SAN DIEGO
RECEIVING DEPARTMENT
8655 PRODUCTION AVE.
SAN DIEGO, CALIFORNIA 92121

ATTN: REQUESTOR REQUESTOR PHONE NO.

OTHER: Coordinate furnishing of services with Jane Doe, Admin. Assist III Dept. of Environmental Engineering

ATTN: Room 1092, Bldg. 2A, Ext. 45311
REQUESTOR BLDG/ROOM PHONE NO.

INVOICE CODE	ITEM NO.	QUANTITY (UNITS)	DESCRIPTION	UNIT PRICE	TOTAL PRICE
	a.		Name and Social Security number of independent contractor		
	b.		Furnish approximately 80 hours of manuscript editing in the research area of passive solar space heating. (If lengthy description, attach separate page.)		
	c.		Work will be performed at independent Contractor's residence. (If some or all work to be performed at UCSD, state location)		
	d.		Period of performance: 10/1/88 - 10/16/88		
	e.		University equipment or supplies will/will not be used.		
	f.		Hourly labor rate: \$12.00		
	g.		Total purchase order not to exceed \$960.00		
	h.		Individual is/is not now an employee of the University of California and has/has not been employed within the last two (2) years.		
	i.		A near relative of (Name) does/does not work for the University of California.		
	j.		An employer-employee relationship does/does not exist between (Name) and the University of California.		
	k.		(Name) is/is not a U.S. citizen. (If alien state country and type of visa.)		
DELIVERY DATE:				TAX	
				TOTAL	

• DIRECT ALL QUESTIONS RELATING TO THIS ORDER TO THE PURCHASING DEPARTMENT, 0 026 THE UNIVERSITY OF CALIFORNIA, SAN DIEGO LA JOLLA, CALIFORNIA 92093

PURCHASING OFFICE INSTRUCTIONS

SPECIAL CLERKS

ACKNOWLEDGE

ATTACHED TO THIS FILE

APPROVAL CODE

INQUIRIES TO →

BILL TO →

PLEASE ITEMIZE ALL CHARGES SHOW CALIFORNIA SALES TAX (VENDOR NUMBER WHEN BILLING) CALIFORNIA TAX. MAIL INVOICE IN TRIPLICATE TO FAX

UNIVERSITY OF CALIFORNIA, SAN DIEGO
ACCOUNTING OFFICE (0 027)
LA JOLLA, CALIFORNIA 92093

TELEPHONE ()

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SUPPLEMENT I

INDEPENDENT CONTRACTORS CHECKLIST

Prior to submitting a *Purchase Order Requisition* POR to the Purchasing Department for an Independent Contractor, the following items must be completed:

1. Does the individual have a City, State, County or Federal business license or tax identification number, other than a Social Security number? Yes _____ No _____

If yes, process POR as you would any requisition for supplies, products or services and indicate the business license or I.D. number within the body of the POR.

If no, continue on with checklist.

2. Is the individual a UC employee or near relative of a UC employee?
Yes _____ No _____

If yes, you must submit the form for *Purchase of Goods or Services from a UCSD Employee or Near Relative* and submit with the POR. (See PPM 523-9.)

If not, continue on with checklist.

3. Has the individual ever been an employee of the University?
Yes _____ No _____

If yes, what was the date that the individual's employment with the University terminated?

If less than two years from date of POR, the form for *Purchase of Goods or Services for a UCSD Employee or Near Relative* must be completed and forwarded with the POR. (See PPM 523-9.)

4. Clearly define the services to be provided by the individual including the reasons why these services cannot be performed by UC employees hired through University Personnel or Temporary Services:

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5. If your POR exceeds \$10,000, can you provide a properly completed Sole Source Justification or quotes from other suppliers of same services? Yes _____ No _____

If you cannot supply the above, you must allow time for Purchasing to seek other bids for the services required.

6. Will the individual require training or instruction from a member of your department?
Yes _____ No _____

7. Will the department be furnishing equipment, materials and/or space to the individual?
Yes _____ No _____

If yes, clearly define what the department will be supplying and/or at what campus location the individual will perform the services.

If no, state where the services will be performed and what supplies and/or equipment the individual will be supplying.

8. Will the department establish hours and guidelines under which the individual will be expected to perform the services? Yes _____ No _____

9. Does the department retain the right to change the methods or direction established by the individual to perform and complete the services? Yes _____ No _____

10. Will the individual be performing stated services alone?
Yes _____ No _____

If no, who will be assisting the individual and who will be responsible for payment to assistants?

11. Does the individual perform same or similar services for clients other than the University? Yes _____ No _____

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12. How many hours per week and weeks per month, do you anticipate the individual will be working for your department?

13. Does the individual advertise same or similar services to the general public?

Yes _____ No _____

The above information is to be completed and reviewed by the requesting department prior to submission of a POR to Purchasing, with a copy of same attached to the POR.

When reviewing the checklist, the following factors must be taken into consideration:

Item #1

If the answer is yes, the individual would not be what the University defines as an independent contractor and the POR would be submitted the same as that for any business.

Items #2 and 3

If the answer is yes, the form *Purchase of Goods or Services from a UCSD Employee or Near Relative* must be completed and submitted with the POR.

Item #5

The Sole Source Justification and/or quotes received by the department must be attached to the POR.

Items #6 through 9

If the answer to these questions is yes, then a clear and defined Employer-Employee relationship exists and the individual cannot be retained as an Independent Contractor. The department must then retain the individual as an employee of the University through Personnel.

Item #10

If the individual is hiring others to work with him/her to perform the services required, it must be clearly stated within the POR that all taxes, worker's compensation and other liabilities are those of the independent contractor.

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Items #11 through 13

This information is used to determine whether or not the individual does, in fact, work as an independent contractor under normal circumstances. If not, then further review by Purchasing and other appropriate departments will be required to determine if the individual can be retained as an independent contractor, should be referred to Personnel, or if the department will be required to seek another source for the services.

The hiring of independent contractors is always under close scrutiny by the State and Federal governments and it is each department's responsibility, as well as that of Purchasing, to ensure that the University is at all times in compliance with the guidelines established by these agencies.

I have reviewed, understand, and approved this checklist for submission with POR #_____.

Requestor Signature/Title

Date