



INDEPENDENT CONTRACTOR PROCEDURE

SCOPE

This document outlines Caltech's procedures for securing the services of an individual who has met the definition of an independent contractor under California State Law and whose services are not readily available internally through existing Caltech personnel.

DEFINITIONS

As used in this procedure:

Employer-Employee Relationship

A relationship in which Caltech has the right to supervise and control the manner of performance, as well as the result of service.

Independent Contractor Relationship

A contractor relationship exists when Caltech has the right to control or direct only the end-result of a service, not the manner in which it is performed. In addition, Caltech generally receives something, for example, transcription services, programming services. So, although part of an independent contractor's services may include advice, an independent contractor is in the end a "doer."

PROCEDURE

Need for Independent Contractor A Department head or Principal Investigator (PI) is responsible for determining that the nature and scope of services is required, costs for services are reasonable, and that services are special, temporary, or highly technical and cannot be performed by existing Caltech personnel during the course of their normal Caltech responsibilities or duties.

Status Determination In general, the determination regarding employee versus independent contractor status is made by the requesting Division/Department (herein referred to as "Department") based on State of California Labor Code. In cases where it is difficult to determine the correct status, Caltech's Purchasing Services Department and Human Resources, in coordination with the Office of General Counsel, may be consulted in order to determine whether an Employer-Employee Relationship exists.

Independent Contractor Agreement An independent contractor agreement shall be prepared by Purchasing Services and executed by the independent contractor and the Purchasing Agent prior to

commencement of service. Only in exceptional cases may services commence before an agreement is executed.

Modifications/Change Requests Any modification/change request to an independent contractor agreement, which may include, extension of the period of performance, termination, expansion of the scope of services, or change in payment amounts must be requested by the Department and submitted to Purchasing Services.

Conflict of Interest Caltech's *Conflicts of Interest Policy* requires all Institute employees to disclose any potential situation where a conflict of interest may exist so that it may be managed or eliminated before proceeding. Employees are required to act in the best interest of the Institute and refrain from taking part in any transaction where an employee does not believe in good faith that he or she can act impartially.

Caltech's *Conflicts of Interest Policy* applies to decisions relating to the hiring of an independent contractor and should be reviewed if it is thought that a potential conflict may exist.

Confidential (Proprietary) Information If the independent contractor, during his or her course of business with the Institute, may have access to or obtain information which Caltech may consider as confidential or proprietary in nature, the requesting Department should notify Purchasing Services, as a separate *Non-Disclosure Agreement* may be recommended.

Intellectual Property If during the life of the independent contractor agreement the independent contractor may discover, invent processes, design, and/or plan intellectual property, whether of a technical nature or not, the requesting Department should notify Purchasing Services, as the Office of Technology Transfer and the Office of General Counsel may need to be notified and consulted for appropriate contractual language.

PROCESS REQUIREMENTS

Prior to commencement of service, the following processes must be addressed as applicable:

1.1 Status Determination

In order to ensure that individuals performing services for Caltech are properly classified, the requesting Department must complete the Individual/Sole Proprietor Analysis (a portion of the Declining PO - Services Agreement purchase requisition form in TechMart). This Analysis is based on State of California classification factors and must be completed and submitted to Purchasing Services prior to individual's start date. A Department representative must certify the information provided in the Analysis has been reviewed and is accurate to the best of their knowledge.

California Assembly Bill (AB) 5 Law, effective January 1, 2020, requires Caltech to perform a series of "tests" to ensure an individual is classified as an independent contractor and not an employee. Under

the “ABC” test, individuals are presumed to be employees, and can only qualify as independent contractors if the hiring entity can demonstrate that:

- A. the individual is free from the company’s control or direction in performing the work; and
- B. the work takes place outside the usual course of the business of the company; and
- C. customarily, the individual is engaged in an independent trade, occupation, profession, or business.

AB5 does contain exemptions for certain occupations with the stated purpose of retaining statutory and case law exemptions already in effect.

If it is deemed that an Employer-Employee Relationship be established, the Department shall follow the normal hiring process established by Human Resources, and the employee paid through Caltech’s payroll system. If the individual is deemed an independent contractor, the appropriate documentation (as discussed below) must be completed and submitted to Purchasing Services, and payment issued by the Payment Services Department via an invoice.

1.2 Competitive Bidding for Services \$10,000 or More

In accordance with Caltech’s *Purchasing Goods and Services Policy*, all procurements that are anticipated to exceed \$10,000 require two or more competitive bids. The requesting Department must provide evidence of competition unless it is determined that competition does not exist (sole source) or the Department has chosen to bypass competition and selected (with justifiable reason) a specific individual (single source). A *Competitive Procurement Summary* form must be completed for each competitive procurement. In cases of sole or single source agreements, the Department shall complete a *Non-Competitive Justification* form, which must include proof of market research.

1.3 Proof of Insurance

Independent Contractors that will provide a service to the Institute, on Institute-controlled premises, must provide, at their own expense, proof of insurance as required by Caltech’s Risk Management Office. Such proof, which must be provided in advance of the individual’s start date, includes a certificate of insurance and an endorsement naming Caltech as an additional insured. Note: Exceptions to this requirement may be granted by Caltech’s Risk Manager depending on the service, liability, and risk to the Institute.

1.4 Independent Contractor Services Request Form

The requesting Department must complete the *Independent Contractor Services Request* form. This form provides Purchasing Services with important information related to the services being performed (i.e. period of performance, statement of work, deliverables, travel, etc.) and will assist in preparing the independent contractor agreement.

1.5 Purchase Requisition

To initiate a formal request for services, the Department must submit an approved purchase requisition (using the *Declining PO - Independent Contractor Services Agreement* form in TechMart, Caltech's e-procurement system). The purchase requisition should include authorization for the entire amount of the service including travel and miscellaneous expenses (if applicable; see section *Travel & Miscellaneous Expenses*). Attached to the purchase requisition, the Department should include the following completed documents:

- *Competitive Procurement Summary* with competitive bids or *Non-Competitive Justification* form (as applicable)
- Certificate of Insurance and Endorsement (as applicable)
- *Independent Contractor Services Request* form, which may include as a separate attachment:
 - *Statement of Work (SOW)*
 - *Resume/Curriculum Vitae (CV)*

1.6 Independent Contractor Agreement

In addition to a Caltech-issued purchase order, Purchasing Services will issue an independent contractor agreement utilizing a pre-approved agreement template. This agreement will include relevant terms and conditions and may be customized as needed, including the statement of work, delivery or performance schedule, and allowable cost and payment.

1.7 Change Requests

To request a modification to an existing independent contractor agreement, which may include, extension of the period of performance, termination, expansion of the scope of services, or change in payment amounts, the Department must submit an approved purchase requisition to Purchasing Services using the *Change Request* form in TechMart. Purchasing Services will then issue a Supplemental Agreement to the independent contractor for signature.

1.8 Subcontracts for “Substantive Work”

The procedures outlined above are not applicable to subcontracts for “substantive work” on federal and non-federal grants and contracts. Subcontracts for substantive work must be processed by the subcontracts team in Purchasing Services.

1.9 New Supplier Set-Up

Setting up a new independent contractor as an official supplier in Caltech's supplier database is the responsibility of the Procurement Services Department. Upon receipt of an approved purchase requisition, the Purchasing Agent will submit a request to the Supplier Management Department. New supplier set-up may take up to 3-5 business days to process.

Supplier Management will request and verify all necessary tax forms as part of the supplier setup process. U.S. citizens or U.S. persons are required to complete and submit IRS form W-9 (Request for Taxpayer Identification Number and Certification). Non-U.S. persons, formally referred to as nonresident aliens, performing services in the U.S. are required to complete a Foreign National Data Form (FNDF) and IRS Form W-8BEN. A tax treaty analysis will be completed to determine residency status and appropriate tax treatment. Additional tax forms may be required to claim tax treaty benefits including Form 8233, passport, and visa.

1.10 Travel and Miscellaneous Expenses

Any anticipated travel and miscellaneous expenses that may be incurred by the independent contractor must be included in the independent contractor agreement, as approved by the Department. Independent contractors shall not request a standalone reimbursement for such expenses but shall include them as part of their normal invoice.

1.11 Paying an Independent Contractor

Payments will be made to an independent contractor only for services rendered and expenses incurred that are within the terms of the independent contractor agreement and in accordance with the following:

1.11.1 Invoice Requirements

Invoices, rendered by the independent contractor and emailed to accountspayable@caltech.edu, must include at a minimum the independent contractor name, remittance address, purchase order number, description, date(s), and location of service provided, and an itemization of the following: rate of pay and the number of hours, days, or claimed effort for the billing period

1.11.2 Invoice Approval

All invoices should be reviewed by the Department to ensure that the claimed charges are within the terms of the agreement.

1.11.3 Cumulative Payments

Cumulative payments may not exceed the stated value of the independent contractor agreement. If there is a need for additional work beyond the value of the agreement, a change request must be completed for the additional amount.

1.11.4 Additional References

For additional information on invoicing, reference *Payment Services' Vendor/Supplier Guide: Preparing and submitting invoices*.

1.12 Tax Reporting/Withholding Requirements

Payments made to independent contractors are considered reportable payments and are subject to the appropriate tax treatment as defined by the IRS and the California Franchise Tax Board (FTB).

1.12.1 Incorrect or Missing Taxpayer Identification Number

Caltech has an obligation to deduct backup withholding on amounts paid to an independent contractor who does not furnish a correct taxpayer identification number (TIN), i.e. social security number (SSN) or employer identification number (EIN), or does not certify that the TIN is correct on IRS Form W-9. The federal withholding rate is 24% for U.S. persons and 30% for nonresident aliens respectively. The State of California requires a separate 7% backup withholding for missing TIN.

1.12.2 Payments Totaling \$600 or More

Payments made to an independent contractor that total \$600 or more during a calendar year, and the independent contractor is not a corporation, will be reported by Caltech on IRS Form 1099-MISC, Miscellaneous Income.

Note: Travel and Miscellaneous expenses paid directly to an independent contractor will be reported on Form 1099-MISC. Independent contractors should consult with their tax accountant to determine taxable and nontaxable income.

1.12.3 Payments made to Nonresidents of California

Payments made to independent contractors who are nonresidents of California may be subject to 7% state income tax withholding for any services performed inside California. Withholding is required if payment is \$1,500 or more during a calendar year. Invoices should reflect the amount of services performed inside and outside of California to determine appropriate withholding amount.

1.12.4 Payments made to Nonresident Aliens

Payments made to independent contractors who are nonresidents of the U.S. will be subject to a 30% federal income tax withholding for any services performed inside the U.S. Invoices should reflect the amount of services performed inside and outside of the U.S. to determine appropriate withholding amount. The Supplier Management Department will collect all necessary tax forms to determine if tax treaty benefits are applicable.

1.12.5 Additional References

For additional information on tax reporting/withholding requirements including withholding rates, reference Payment Services' *Vendor & Supplier Guide: IRS & FTB Withholding Guidelines for U.S. (Domestic) Payees* and *Vendor & Supplier Guide: IRS & FTB Withholding Guidelines for Foreign Payees*.

ROLES AND RESPONSIBILITIES

Director of Procurement Services

The Director of Procurement Services is responsible for recommending policy changes and updates to establish and maintain compliance with government laws and to oversee the purchasing process while ensuring appropriate stewardship of Caltech assets.

Division and Department Administrators

Division and Department Administrators are responsible for holding their employees, students, and visiting associates accountable for their purchasing activities and to ensure that they comply with this Independent Contractor Policy, the *General Purchasing Services Policy* and the *Purchasing Goods and Services Policy*.

Human Resources

Human Resources representatives work with Purchasing Agents to make a status determination as to whether the request fits an Employer-Employee Relationship or an Independent Contractor Relationship. In the event that an Employer-Employee Relationship is determined, Human Resources will engage with the Department representative to process the worker as a Caltech employee.

Purchasing Agents

Purchasing Agents are responsible for ensuring that all agreements for independent contractors include appropriate documentation, including price justification, market research, cost/price analysis, and the rationale of purchasing decisions. In addition, Purchasing Agents shall minimize the risk to Caltech by verifying contractor relationships exist, ensuring independent contractors comply with Caltech's insurance requirements, and making prudent business decisions when independent contractors take exceptions to Caltech's terms and conditions.

Requisitioners

Requisitioners are responsible for ensuring that all purchase requisitions for independent contractor services submitted through TechMart comply with this Independent Contractor Policy, the *General Purchasing Services Policy*, and the *Purchasing Goods and Services Policy*. The Requisitioner must ensure that purchase requisitions are complete and accurate, including detailed statement of work, correct funding sources, and correct expenditure types. Prior to submitting a purchase requisition to Purchasing Services, the Requisitioner is responsible for ensuring that all the appropriate supporting documentation is attached to the Requisition.

RELATED REFERENCES

Forms

[Competitive Procurement Summary](#)

[Independent Contractor Services Request](#)

[Non-Competitive Justification](#)

Related Information

[Conflicts of Interest Policy](#)

[Purchasing Goods and Services Policy](#)

[Vendor & Supplier Guide: IRS & FTB Withholding Guidelines for Foreign Payees](#)

[Vendor & Supplier Guide: IRS & FTB Withholding Guidelines for U.S. \(Domestic\) Payees](#)

[Vendor/Supplier Guide: Preparing and submitting invoices](#)

PROCEDURE ISSUED BY

This procedure is issued and approved by Procurement Services. Any exceptions that require a deviation from this procedure shall be reviewed and approved by the Director of Procurement Services and coordinated with the Purchasing and Payment Services business units.

EFFECTIVE DATES AND UPDATES

Action	Effective Date	Description of Action
Issued Policy	October 6, 2020	Issued by Procurement Services