

## INDEPENDENT CONTRACTOR (IC) REQUEST PROCEDURES

### PURPOSE AND SCOPE

Independent Contractors (IC) are identified by the absence of an “employer-employee” relationship. In accordance with the California Supreme Court decision, *Dynamex Operations West vs. Supreme Court*, and Assembly Bill 5, the CSU adopts the ABC TEST to determine whether a person is an employee or an independent contractor. This test applies the presumption that all workers are employees, unless the employer can prove each of the following requirements:

- ❖ The worker is free from the campus’s control and direction. This means that the hiring entity must not be able to control or direct what the worker does, either by contract or in actual practice; and
- ❖ The worker performs a service that is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed. For example, a campus cannot hire a faculty in counseling to work as an independent contractor for the purposes of conflict resolution or hire instructors to teach a certificate program as independent contractors. Nor can a campus hire an independent contractor to perform IT services that are already being performed by campus staff; and
- ❖ The worker customarily engages in an independently established trade, occupation, profession, or business. Factors relevant to this determination include whether the business is incorporated or licensed, whether the services are advertised, and whether the contractor also offers services to the public or other potential customers.

The determination of whether an individual should be classified as an independent contractor or as an employee is not straightforward. It requires detailed analysis of each situation’s unique circumstances. Because of recent changes in the law, past approval of an individual as an independent contractor should not lead to a presumption that the same classification will be made again. Convenience cannot be a determining factor for classification. It is important to understand that misclassification can result in serious financial penalties and consequences for the campus.

The following procedures are to be used to complete and submit the Independent Contractor Request Form. **If the proposed Independent Contractor is a current CSU or State of California employee, DO NOT proceed with this Independent Contractor Request Form. There are also restrictions placed on those who have been employed by the State of California (including the CSU) in the past one to two years. Please contact Human Resources for further guidance.**

## PROCEDURES TO SUBMIT AN INDEPENDENT CONTRACTOR REQUEST FORM

IC requests can **only** be submitted **in advance** by the [Appropriate Administrator], for work that **will be** performed on campus.

A **Complete INDEPENDENT CONTRACTOR REQUEST FORM** must be submitted to Brian Cotham, Director of Procurement, via e-mail at [bcotham@csufresno.edu](mailto:bcotham@csufresno.edu), or via campus mail to Brian Cotham, mailstop JA111.

### 1. **Independent Contractor Information**

Complete the proposed IC's information as requested on the Form.

### 2. **Department Request Details**

The hiring department must provide its name, requestor [Appropriate Administrator], date range of work to be performed, amount to be paid and contact information.

### 3. **Description of Services/Justification.**

- Justification must describe the nature of the request, business rationale, nature of the services to be performed and any supporting information available
- Attach all supporting documents for IC request including but not limited to the proposed scope of work outlined in a draft contract.

### 4. **Administrator Review and Authorization (Appropriate Administrator only)**

Name, title, signature and date must be provided by the appropriate administrator authorizing the request.

## IMPORTANT INFORMATION

- Work should **not** be performed on campus prior to **final** approval by Human Resources.
- Once all required documents have been received in Human Resources, an email response will be sent to the requesting Department/Division, providing a determination; within 5-7 business days.

## HUMAN RESOURCES REVIEW

Human Resources, as delegated by the President, will have final approval authority for IC requests. **Each IC request is reviewed on a case-by-case basis.**

- HR will respond to the requesting Department/Division with a decision to all requests within 5-7 business days of receipt, pending additional information is not required.
- Approved requests will include notification to Procurement Services.

## PROCUREMENT REVIEW AND PROCESSING

Procurement Services will process a requisition and create a purchase order for the requestor. **Departments may not move forward without a valid purchase order signed by Procurement/Contract Services.**