

**CALIFORNIA STATE UNIVERSITY STANISLAUS
CONSULTANT/INDEPENDENT CONTRACTOR DETERMINATION CHECKLIST**

This form is used to determine that the relationship between the consultant/independent contractor and California State University, Stanislaus (CSUS) is not that of employee/employer consistent with IRS regulations and the common law rules (see reverse). CSU employees and immediate past employees must comply with new restrictions regarding contracting with the CSU. For more information please review CSU Coded Memo HR 2003-09 dated June 9, 2003 at <http://www.calstate.edu/HRAdm/pdf2003/HR2003-09.pdf>

This form does not replace a contract or invoice. If you need help completing this form, phone Procurement Services at 3245. Forward the completed form to Procurement Services.

Section 1: To be completed by prospective consultant/independent contractor (i.e. service provider)

- Name of service provider: _____
- Mailing Address: _____
(street) (city, state) zip+4 (country)
- Social Security or Taxpayer Identification Number: _____
- Phone: _____ Fax: _____

Section 2: To be completed by service provider. Please answer all questions and sign in space provided.

- Is the service provider an incorporated entity? (i.e. incorporated, inc. corporation, corp.) _____yes _____no

If the answer to this question is "yes" and is documented, the service provider may be paid as an independent contractor. Skip to the signature section.

Section 3: To be completed by service provider. Please answer all questions and sign in space provided. Enter an 'X' for each Yes or No response.

- Do you determine what means or methods to use in achieving the desired results? _____yes _____no
- Do you set your own priorities on time, effort, and hours of work? _____yes _____no
- Do you receive little or no training, supervision, or instruction from the University? _____yes _____no
- Do you provide similar services to other clients? _____yes _____no
- Do you engage in entrepreneurial activities in an established business at risk for loss? _____yes _____no
- Do you provide your own stationery, telephone, business forms, equipment, tools? _____yes _____no
- (Attach copy of business card and/or yellow/business pages listing, along with a list of at least three clients for whom work has been performed during the past twelve months)
- Do you have your own insurance for work-related injuries? _____yes _____no
- Are you currently employed by any CSU campus or the CSU Chancellor's Office? _____yes _____no
- Have you been employed by any CSU campus or the CSU Chancellor's Office in the past 24 months? _____yes _____no
- Do you have a relative employed at CSUS? If yes, list relative's name and dept. _____yes _____no

I understand that amounts received under an independent contractor/consultant agreement are subject to all applicable federal and state income taxes and self-employment taxes, and that no taxes will be withheld from any payments due to me (except for payments to nonresident aliens) since I am not an employee of CSUS. Under penalty of perjury, I certify that the above information is true and correct.

Signature of Proposed Service Provider/Date

Section 4: To be completed by the CSUS Department requesting the service. If service provider is incorporated per Section 2, skip to the signature section.

Specific service to be provided: _____

Department requesting the services: _____

Departmental contact person: _____ Phone: _____

- Is the work performed by the service provider integral to the functioning of the University? _____yes _____no
- Will the service provider supervise or direct University employees as part of the service provided? _____yes _____no
- Is the relationship between the University and the service provider limited in duration? (back-to-back, recurring contracts could be considered to be a continuing relationship rather than separate, finite relationships) _____yes _____no
- Does this service provider perform essentially the same service as an employee of the University? _____yes _____no
- Has this service provider previously been paid as a University employee to perform essentially the same tasks? _____yes _____no

My response to these questions are true and accurate to the best of my knowledge. I will notify Procurement Services promptly if our relationship with the worker changes significantly during the course of our contract. I understand that there are penalties for misclassifying a service provider. If the service provider is paid as a contractor and the IRS determines that the service provider should have been paid as an employee, the campus department initiating this request will be responsible for paying any taxes that should have been withheld but were not, plus interest penalties.

Departmental Representative's Signature/Date

APPROVED/DISAPPROVED:

Procurement Services Representative/Date

The U.S. Internal Revenue Code requires the presence of specific characteristics between the employer and the contractual provider of personal/professional services before an Independent Contractor relationship can exist. Before any performance of services, campus departments contracting for personal/professional services must assess the relationship with the individual provider to ensure that the individual is properly classified. An independent contractor is defined as an individual over whom the employer has the right to control or direct only the result of the work, and not the means and methods of accomplishing the result.

The IRS has established 20 guidelines to help employers determine whether a worker should be treated as an employee or an independent contractor for tax purposes. Those 20 guidelines are:

1. **Instructions.** Employees comply with their employer's instructions about when, where and how to work, or the employer has the right to control how a worker's work results are achieved. Independent contractors have more flexibility.
2. **Training.** Employees may receive training from their employers to perform services in a particular manner. Independent contractors usually use their own work methods and receive no training from those purchasing their services.
3. **Integration.** Employees' services are usually integrated into the business's operations because they are key to the success or the continuation of the business. Independent contractors are independent of the business's operation.
4. **Services Rendered Personally.** Employees render services personally. Independent contractors render services as contractors.
5. **Hiring Assistants.** Employees work for an employer. Independent contractors can hire, supervise and pay assistants under a contract that requires them to provide materials and labor and to be responsible for the results.
6. **Continuing Relationship.** Employees generally have ongoing relationships with their employers. Independent contractors' relationships will usually be more sporadic.
7. **Set Hours of Work.** Employers usually set their employees' work hours. Independent contractors usually set their own hours.
8. **Full-Time Required.** Employees may be required to work or to be available full-time. Independent contractors may work when and for whom they choose.
9. **Work Done on Premises.** Employees usually work on their employers' premises or on a route or at a location approved by their employers.
10. **Order or Sequence Set.** Employees may be required to perform services in the order or sequence set by their employers. Independent contractors can establish their own sequence.
11. **Reports.** Employees may be required to submit reports to their employers. Independent contractors are not required to submit reports to their clients.
12. **Payments.** Employees are paid by the hour, week or month. Independent contractors are usually paid by the job or through a commission.
13. **Expenses.** The business and travel expenses of employees are generally paid by their employers. Independent contractors are responsible for paying their own expenses.
14. **Tools and Materials.** Employers normally furnish their employees with the key tools, materials and other materials they need to do their jobs. Independent contractors normally furnish their own tools and materials.
15. **Investment.** Employees normally do not invest in the facilities. Independent contractors have a significant investment in the facilities they use to perform services for someone else.
16. **Profit and Loss.** Employees do not experience a profit or loss; independent contractors can.
17. **Works for More Than One Person or Firm.** Employees usually work for one firm at a time. Independent contractors may work for multiple persons or firms at the same time.
18. **Offer Services to the General Public.** Employees usually work for one employer. Independent contractors make their services available to whomever they want.
19. **Right to Fire.** Employees can be fired by their employers. Independent contractors cannot be fired as long as they produce a result that meets the specifications of their contract.
20. **Right to Quit.** Employees have the right to quit a job at any time without incurring liability. Independent contractors usually agree to carry out specific tasks or series of tasks and are responsible for completing those tasks satisfactorily, or are legally obligated to make good for failing to do so.

This resource is (c) 1994 by John Ventura, and is excerpted from "The Small Business Survival Kit" published by Dearborn Financial Publishing Inc., Chicago, IL.