

Process for Engaging a Foreign-Based Independent Contractor or Consultant

I. Purpose

The purpose of the “Process for Engaging a Foreign-Based Independent Contractor or Consultant” is to help ASU faculty and staff navigate and comply with ASU, state, federal, and foreign regulations for engaging a foreign-based independent contractor/consultant. Global Operations encourages faculty and staff to complete the following steps in the order in which they are provided, and reference the relevant policies for additional guidance. Please note that this document does not cover design and construction related services.

II. Policies

<u>FIN 421-01</u>	Guest Lecturers, Consultants, and Other Independent Contractors
<u>FIN 425-04</u>	Nonresident Alien Independent Contractors and Other Foreign Entities
<u>PUR 303-02</u>	Sole Source Procurement/Justification
<u>PUR 305-01</u>	Bidding Requirements for Procurements Costing Less than \$50,000
<u>PUR 305-02</u>	Bidding Requirements for Procurements Costing at Least \$50,000 but Less than \$100,000
<u>PUR 306-01</u>	Bidding Requirements for Procurements Costing \$100,000 or More
<u>PUR 306-02</u>	Waiver of Bidding Requirements for Procurements Costing \$100,000 or More
<u>PUR 402-01</u>	Personal/Professional Services
<u>RSP 503-03</u>	Consultants, Guest Lecturers, and Other Professional Services for Sponsored Projects
<u>SPP 210</u>	Consultants/Independent Contractors

III. Procedures

A. Select Independent Contractor/Consultant

1) **Identify staffing need** | Responsible party: department staff

Use *Appendix A: Guidance Document for Staffing Global Projects* to determine the appropriate pathway for staffing your global project. While engaging an individual as an independent contractor/consultant is generally easier than hiring the individual as an employee, the independent

contractor/consultant process should not be used to circumvent the employee process ([SPP 210](#), [FIN 421–01](#)). If you determine that using an independent contractor/consultant is the appropriate pathway for staffing your global project, proceed to the next step.

2) Draft scope of work | Responsible party: Department staff

Draft a scope of work that includes clearly defined milestones, deliverables, and a timeline.

3) Estimate total dollar amount | Responsible party: Department staff

Estimate the total dollar amount, including expenses, that you anticipate paying the independent contractor/consultant for the entire scope of work. Take into account potential amendments to the scope of work. For example, if you anticipate renewing a one year scope of work for a second year, your estimate should be for two years.

4) Satisfy competition requirements | Responsible party: Department staff and Purchasing buyer

Use the following table to determine the competition requirements for your independent contractor/consultant, based on the estimated total dollar amount. Follow the Purchasing processes referenced in the table to satisfy the competition requirements and select an independent contractor/consultant.

Key

✓ = Required

✓ = Select the most appropriate option

Abbreviation	Name	Description	\$100.01 - \$10,000.00	\$10,000.01 - \$49,999.99	\$50,000.00 - \$99,999.99	\$100,000.00 and over
Small Business	Small Business Preferred	You must award the contract to a small business unless impracticable.	✓ PUR 305-01	✓ PUR 305-01	✓ PUR 305-02	
IQS	Informal Quote Summary	You may provide a compelling justification paragraph to the buyer for using a specific independent contract/consultant. The buyer completes the Informal Quote Summary, which must be approved by the buyer’s manager. As proof of justification, you may be required to provide the buyer with additional documents such as a CV or resume.		✓ PUR 305-01 Check with a buyer .	✓ PUR 305-01 Check with a buyer .	
ITB, RFP, or RFQ	Formal Bid Process	You must have public competition via an Invitation to Bid, Request for Proposal, or Request for Qualifications.			✓ PUR 305-02	✓ PUR 306-01

SSJ	Justification for Sole Source Purchase	You can skip the informal/formal bidding process. <i>There is only one source that supplies the good or service.</i>				✓ PUR 303-02
Bid Waiver	Request for Waiver of Bidding Requirements	You can skip the informal/formal bidding process. <i>You must first obtain approvals from several high-level administrators. Bid waivers are typically reserved for emergency orders.</i>				✓ PUR 306-02

B. Prepare Documentation

1) Complete and submit the [Employee/Independent Contractor Determination Checklist](#) | Responsible party: department staff

The Employee/Independent Contractor Determination Checklist (ICC) must be completed for each independent contractor/consultant with the following exceptions:

- Expense reimbursement only: no income or honorarium payment is included.
- Cumulative payments to the individual service provider of less than \$600 per calendar year
- Guest lecturers and speakers visiting campus for less than two weeks
- Individuals performing external peer-review consulting services as part of departmental/program accreditation
- Performers giving a limited number of performances
- Athletic Officials
- Corporations or partnerships (sole proprietors and single member LLC's are not exempt)

Complete the ICC at least two weeks prior to the start date of the independent contractor/consultant. For Tax Services approval, please fax to the Financial Services Tax unit (480) 965-2625. Expect to receive the approved/unapproved ICC back from Tax Services via email within a few days to a week and a hard copy via campus mail within two weeks. If Tax Services approved your ICC, proceed to the next step.

Abbreviation	Name	Description	\$100.01 - \$10,000.00	\$10,000.01 - \$49,999.99	\$50,000.00 - \$99,999.99	\$100,000.00 and over
ICC	Employee/Independent Contractor Determination Checklist	Tax Services will determine whether the prospective contractor is providing services as an employee or independent contractor/consultant.	✓ SPP 210	✓ SPP 210	✓ SPP 210	✓ SPP 210

2) **Locate or setup the individual/organization in Advantage** | Responsible party: Department staff (finance)
 Search Advantage to see if the independent contractor/consultant is in the system as a vendor. If the independent contractor/consultant is not in the system, have the independent contractor/consultant complete the appropriate tax form(s) (W-9 and vendor authorization form, W-8BEN, or W-8BEN-E). Use the completed tax form(s) to setup the independent contractor/consultant as a vendor in Advantage.

Abbreviation	Name	Description	\$100.01 - \$10,000.00	\$10,000.01 - \$49,999.99	\$50,000.00 - \$99,999.99	\$100,000.00 and over
W-9 and Vendor Authorization Form, W-8BEN, W-8BEN-E	U.S. Individuals and Entities: FACTA Compliant Substitute W-9 and Vendor Authorization Form	The independent contractor/consultant must complete the appropriate tax form(s) before ASU can issue payments.	✓ FIN 421-01	✓ FIN 421-01	✓ FIN 421-01	✓ FIN 421-01
	Foreign Individuals: W-8BEN (see instructions)					
	Foreign Entities: W-8BEN-E (see instructions)					
VE	Vendor Entry (Advantage)	You must setup the independent contractor/consultant as a vendor in Advantage before ASU can issue payments.	✓ FIN 421-01	✓ FIN 421-01	✓ FIN 421-01	✓ FIN 421-01

3) **Prepare contract documents** | Responsible party: Department staff
 If the total dollar amount is \$10,000 or under, complete the DPSO, and have the independent contractor/consultant sign and return it prior to the start date of their services. This is considered the contract. Upon completion of the services, have the department sign the DPSO, confirming the services provided are complete. Submit the DPSO along with invoice, payment, and ICC to Financial Services, University Services Building, Mail Code 5812.
 If the total dollar amount is over \$10,000, prepare the contract. Review *Appendix C: Special Provisions*, and add required special provisions to the contract. For Exhibit A – Services and Deliverables, finalize your scope of work prepared in section A.2. above. For Exhibit B – Compensation, draft a document detailing the compensation arrangements you and the independent contractor/consultant have agreed to. Include the following information:

- Payment amount and type – tie payments to deliverables whenever possible:
 - Fixed payments are preferred over hourly rates
 - If using hourly rates, consider getting quotes and including a cap, e.g. “\$300/hour up to \$6,000”
 - Desired division amount between services and expenses
- Dates invoices are due

- Contact info for where invoices should be sent
- Invoice requirements (see Appendix B: Invoice Requirements)
- “Payments will be processed after invoices are received.”
- “Payments will be made in U.S. Dollars.”
- “Expenses shall not exceed ASU per diem amounts.”

For Exhibit C, obtain certificates of insurance from an authorized agent of the independent contractor’s/consultant’s insurance broker. Finally, have the independent contractor/consultant complete the Sole Proprietor Waiver or Independent Contractor Agreement to satisfy workers’ compensation insurance requirements.

Abbreviation	Name	Description	\$100.01 - \$10,000.00	\$10,000.01 - \$49,999.99	\$50,000.00 - \$99,999.99	\$100,000.00 and over
DPSO	Departmental Professional Services Order	You must send certification that the work was completed to Financial Services before they will issue a check.	√* FIN 421-01			
Contract	Agreement for Independent Contractor/Consultant Services	You must fill in the contract with the required information.		√ FIN 421-01	√ FIN 421-01	√ FIN 421-01
Special Provisions	Special Provisions	For a foreign-based independent contractor/consultant, you must add additional terms to the contract (<i>see Appendix C: Special Provisions</i>).		√	√	√
Exhibit A	Exhibit A – Services and Deliverables	You must document the services and deliverables arrangements you have made with the independent contractor/consultant.		√	√	√
Exhibit B	Exhibit B – Compensation	You must document the compensation arrangements you have made with the independent contractor/consultant.		√	√	√
Exhibit C	Exhibit C – Insurance Requirements	The independent contractor/consultant must carry certain insurance coverage to work with ASU.		√	√	√
Certificate of Insurance	Request for Certificate of Insurance	The independent contractor/consultant provides documentation to fulfill insurance requirements.		√	√	√
Sole Proprietor Waiver or Independent	Sole Proprietor Workers’ Compensation Waiver Form	The independent contractor/consultant must satisfy workers’ compensation requirements. The version of the form used depends on the tax		√	√	√

Contractor Agreement	or Independent Contractor Agreement	status of the independent contractor/consultant (sole proprietor/individual vs corporation/company with employees).				
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* Review [FIN 421-01](#) for exceptions.

C. Execute Contract

1) Partially execute contract | Responsible party: Department staff

Send the contract with special provisions and exhibits to the independent contractor/consultant for signature. If the independent contractor/consultant requests revisions, notify the appropriate Purchasing [buyer](#). You can determine the buyer by the commodity type. Most procurements will fall under “General – Consultant Fees.” Once the independent contractor/consultant signs the contract, proceed to the next step.

2) Send documents to Purchasing | Responsible party: Department staff

Send the following documents/information to the appropriate Purchasing [buyer](#).

- Quotes
- Approved sole source justification
- Approved bid waiver
- Approved ICC
- Partially executed contract
- Certificate of insurance
- Sole proprietor waiver or independent contractor agreement
- Email of the independent contractor/consultant

Confirm that the buyer has all the info he/she needs to prepare the purchase order and sign the contract.

3) Submit RX through Advantage | Responsible party: Department staff (finance)

Submit the RX through Advantage.

Abbreviation	Name	Description	\$100.01 - \$10,000.00	\$10,000.01 - \$49,999.99	\$50,000.00 - \$99,999.99	\$100,000.00 and over
RX	Purchase Request (Advantage)	You send a request to the Purchasing buyer to setup a purchase order.		✓ PUR 402-01	✓ PUR 402-01	✓ PUR 402-01

*See [Purchases Not Requiring a Purchase Order](#) for exceptions.

4) Setup PO and fully execute contract | Responsible party: Purchasing buyer

Setup the purchase order (PO), sign the contract on behalf of ASU, and distribute copies to the department staff and independent contractor/consultant.

D. Execute Amendments

1) Prepare contract changes | Responsible party: Department staff

Prepare contract changes, including revisions to scope of work, compensation, contract term, terms and conditions, etc.

2) Identify changes to competition requirements | Responsible party: Department staff

If the amendment includes changes in compensation, review section A. 4. above to see if you have crossed a new dollar threshold. If you have done so, follow the guidance in that section to satisfy the new competition requirements.

3) Send documents to Purchasing | Responsible party: Department staff

Send the relevant documents/information to your previously assigned contracts specialist.

4) Prepare, execute, and distribute amendment | Responsible party: Purchasing contracts specialist

Prepare the amendment, have the amendment signed by the independent contractor/consultant and ASU, and distribute a copy of the fully executed amendment to all parties.

5) Request changes to PO | Responsible party: Department staff

Send the following documents/information as applicable to your assigned Purchasing buyer to update the purchase order:

- Fully executed amendment
- Approved sole source justification
- Approved bid waiver
- Approved ICC
- Vendor-signed Workers Compensation Waiver
- PO information:
 - Current PO number
 - Current PO balance by line number
 - PO increase(s) by line number and amount (must match amendment)

6) Execute changes to PO | Responsible party: Purchasing buyer

Execute changes to the PO and send copies to the department staff and independent contractor/consultant.

Appendix A: Guidance Document for Staffing Global Projects

Review the statements in each column to determine the appropriate pathway for staffing your global project. Then, follow the process outlined at the bottom of the chosen column.

CONSULTANT/ INDEPENDENT CONTRACTOR	U.S.-BASED EMPLOYEE	FOREIGN-BASED EMPLOYEE
<p>An individual or business whose expertise is required to perform the project. Services are temporary and special or highly technical.</p>	<p>An individual, eligible to work in the United States and employed by ASU on a full- or part-time basis, including academic professionals, administrators, non-faculty administrators, university staff, and faculty.</p>	<p>An individual employed on behalf of ASU by a Professional Employer Organization (PEO), or similar employee leasing company, whose primary work location is other than the U.S. or its territories. A foreign-based employee reports to ASU on technical matters and reports to the PEO on administrative matters.</p>
<p>An individual or business outside the project who confers with the PI regarding research objectives</p> <p>Does not develop the objectives of the project</p> <p>Is not responsible for the overall outcome of the project</p> <p>Is not responsible in designing or developing the research</p> <p>Is not responsible for conducting the research</p> <p>Is not responsible for reporting the research</p> <p>Is not essential toward the shape, direction, and completion of the project</p> <p>Receives a fee for their services not a salary</p>	<p>Is supervised by the PI or other senior personnel</p> <p>May be responsible for developing the objectives of the project</p> <p>May be responsible for the overall outcome of the project</p> <p>May be responsible in designing or developing the research</p> <p>May be responsible for conducting the research</p> <p>May be responsible for reporting the research</p> <p>Is essential toward the shape, direction, and completion of the project</p> <p>Receives a salary and may be eligible for ASU-provided benefits if employed more than 0.50 FTE</p>	<p>Role falls under U.S.-Based Employee as opposed to Consultant with the exception of serving as an Investigator on the project</p> <p>Primary work location is outside the U.S. and its territories as the duties and responsibilities cannot be carried out from the U.S.</p> <p>The project requires an individual to work in a specific foreign country on a full-time basis at ASU's technical direction</p> <p>There is a substantive reason why a subrecipient or other partner organization (especially a local partner) cannot hire the individual</p>

<p>Provides similar services to other organizations</p> <p>Does not serve as senior personnel – e.g., Co-Investigator, Principal Investigator, etc.</p> <p>Will not use university resources. Provides his/her own work area, tools, materials, and supplies</p> <p>Sets his/her own work schedule, including number of hours and/or days of the week</p> <p>ASU defines the scope of work</p> <p>Consultant determines how to accomplish the work</p> <p>Is not considered an employee of the University and therefore is not eligible for ASU-provided benefits, workers compensation, liability coverage, or unemployment</p> <p>Payment is based upon completion of specific work, rather than time worked</p> <p>Has not been employed by ASU, in a regular or temporary appointment, during the preceding 12-months Will not become an ASU employee soon after the consultant agreement ends</p> <p>Is not currently receiving payments from the Arizona State Retirement System</p> <p>Routinely provides the same or similar services outside of ASU to the general public as part of a continuing trade or business</p>	<p>May serve as senior personnel – e.g., Co-Investigator, Principal Investigator, etc.</p> <p>Work area, tools, materials, and supplies are provided by ASU</p> <p>Work schedule is set by ASU</p> <p>Has duties and responsibilities as opposed to a scope of work</p> <p>Is regularly, e.g. annually, evaluated on work performance</p> <p>Primary work location is within the U.S. or its territories</p>	
<p>Follow the procedures outline on the Purchasing website related to retaining consultants and independent contractors.</p>	<p>Follow your department’s standard recruitment and hiring process. For recruitment and hiring of future OKED employees, follow these Instructions</p>	<p>Fill out the <i>International & ID Hire Request Form</i> and send it to global.ops@asu.edu. If the request is approved, work with OKED Global Operations to</p>

	to submit an HR Recruitment Request through SharePoint.	hire the individual by following the <i>Process for Recruiting and Hiring a Foreign-Based Employee</i> .
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Appendix B: Invoice Requirements

Require your independent contractor/consultant to provide the following information on invoices at a minimum:

- Company name and address
- Unique invoice number
- Invoice date, e.g. dd/mm/yyyy
- Range of dates covered by invoice, e.g. dd/mm/yyyy – dd/mm/yyyy
- Wire Transfer Information including bank name and address, account number, swift code, ABA number, and routing number.

Following is a sample invoice template that you can include in your contract and/or send to your independent contractor/consultant.

INVOICE # 1 (SAMPLE INVOICE TEMPLATE)

DATE SUBMITTED: <Date>

SENT TO	MAKE PAYMENT TO
Arizona State University ATTN: <Name> Email: <Email>	<Contractor Name> <Contractor Address>

INVOICE PERIOD: <Start Date – End Date>

INVOICE DETAILS:

DESCRIPTION OF SERVICES PROVIDED	AMOUNT
Consulting Fee	\$0,000.00
Expense Reimbursement (if any)	\$0,000.00
Amount Owed (in U.S. Dollars)	\$0,000.00

BANK DETAILS:

Bank: <Name and Address>

Account Number: <Account Number>

Swift Code: <Swift Code>

ABA Number: <ABA Number>

Routing Number for Direct Deposit: <Routing Number>

Routing Number for Wire Transfer: <Routing Number>

Appendix C: Special Provisions

The following special revisions should be included in all contracts with foreign-based independent contractors/consultants. If the independent contractor/consultant is being hired under a sponsored project, you should also identify terms and conditions need to be flowed down such as travel requirements.

Foreign Corrupt Practices Act Compliance. CONSULTANT warrants that it is familiar with the U.S. laws prohibiting corruption and bribery under the U.S. Foreign Corrupt Practices Act. The parties agree that, in connection with the services and activities undertaken pursuant to the Agreement, they shall not offer or provide money or anything of value to any governmental official or employee or any candidate for political office in order to influence their actions or decisions, to obtain or retain business arrangements, or to secure favorable treatment in violation of the Foreign Corrupt Practices Act, either directly or indirectly. Any breach of the U.S. Foreign Corrupt Practices Act shall be deemed a breach of this Agreement for purposes of termination.

Export Controls. CONSULTANT and the UNIVERSITY acknowledge and agree that interactions between U.S. nationals and non-U.S. national might be subject to U.S. laws and regulations controlling the transfer or sharing of information or technical data, computer software, laboratory prototypes and other commodities (“Technology”), as defined and restricted by the U.S. Export Administration Regulations, U.S. International Traffic in Arms Regulations, and through the sanctions and embargoes established through the Office of Foreign Assets Control (“Export Control Laws”). Accordingly, the parties agree that none of the services undertaken pursuant to this Agreement shall require either party to take or fail to take any action that would cause a violation of the Export Control Laws. If any of the activities to be undertaken pursuant to this Agreement require, in the sole judgment and discretion of the UNIVERSITY, a license or other authorization from any agency or authority of the U.S. government and/or any written assurances that the party receiving any Technology shall not re-export, transfer or otherwise share such Technology to certain other foreign nationals or destinations without the prior approval of the U.S. Government, the parties agree that no such activity shall be required unless and until such license or written assurance is obtained. The parties agree to cooperate with each other in order to facilitate compliance with any applicable requirements of the Export Control Regulations.