



Guidelines for Determining Independent Contractor vs. Employee Status for External Service Providers Performing Services within the United States

Effective Date: December 11, 2012

Purpose

Federal and state tax and labor laws require Boston University to ensure that its external service providers are properly classified as employees or independent contractors. Classification of a service provider determines the University's tax withholding and reporting obligations and the appropriate system (payroll or SAP Supplier Relationship Management) from which the individual should be paid. If service providers are misclassified as independent contractors, then the University cannot withhold and remit the proper amount of income and employment taxes. As a result, the Internal Revenue Service (IRS) may assess tax penalties and interest and there may be civil and/or criminal penalties under state law. To ensure compliance, when engaging an external service provider, University departments must submit the documentation described in these Guidelines to determine a service provider's status before any services are performed or payment requests are processed.

All service providers must be presumed to be employees unless the provider's relationship with the University satisfies IRS and state law standards for independent contractor status. These guidelines apply to service providers who are individuals or sole proprietors (including single member LLCs). The guidelines do not apply to payments made to other kinds of business entities (such as corporations, LLCs, or partnerships) for the services of an entity employee or to payments for the purchase of goods/merchandise.

For similar guidance on individuals performing services outside the United States, please contact the Office of Global Programs at globalops@bu.edu.

Stakeholders

- All faculty and staff who engage individuals to perform services, process transactions related to the services and/or authorize payments
- Sourcing & Procurement
- Office of Human Resources
- Office of Sponsored Programs
- Post Award Financial Operations
- Accounts Payable Department
- Payroll Department
- Office of Research Compliance

General Statement of Procedures

Procuring services from an external service provider requires evaluating whether the provider should be classified as an employee, paid through payroll with tax withholdings, or may be classified as an independent contractor, paid through SAP as a 1099 without tax withholdings. **This evaluation and classification must be performed *before* engaging an external service provider to comply with tax withholding and reporting responsibilities.** The evaluation must be based upon IRS guidance, not administrative ease, budget constraints or funding guidelines.

Service providers are presumed to be University employees unless the relationship satisfies IRS and state guidelines for independent contractors. In general, a service provider may be considered an independent contractor if the provider's services are urgent, special, temporary, or highly technical and cannot be performed economically or satisfactorily by University staff members within the scope of their normal University responsibilities.

The IRS and the Massachusetts Attorney General have provided guidance for classifying an external service provider. The primary issue is "control": The more control the University has over the provider and the work product, the more likely the provider will be deemed an employee. The IRS currently emphasizes three broad categories of control: behavioral control, financial control, and the overall relationship.

Behavioral Control – An independent contractor determines how he or she will accomplish the task. He or she completes the job using his or her own approach with little direction and dictates the hours that he or she will work on the job. If the University provides training and/or instructions on how to complete the task, the external service provider should generally be classified as an employee.

Financial Control – An independent contractor has a significant investment in his or her business and can make a profit or loss due to expenses they incur, such as tools, materials, equipment and supplies needed to run the business. Contractors make their services available to the public and have a broad customer base. They do not depend on a single employer for the continuation of their services. If the external service provider works primarily for the University, the external service provider should generally be classified as an employee. Contractors are generally paid a fixed fee based on specific tasks identified in a contract.

Relationship – If the University engages an external service provider for an indefinite period, rather than for a specific project or period, this suggests the provider should be classified as an employee. In addition, if the services performed by the external service provider are a key aspect of the University's core business (e.g., teaching a course), this is another indicator that the provider should be classified as an employee. In other words, to qualify as an independent contractor, the service provider must provide services that are outside the University's usual course of business.

In addition to the concepts identified above, there are three basic questions that will assist in

determining the correct classification:

- a. Will the service provider teach a for-credit course?
- b. Does the University pay others as employees who perform essentially the same duties that are to be performed by this service provider?
- c. Has this service provider previously been paid as an employee to perform essentially the same task?

If the answer to any of these questions is yes, the individual in question should be treated as an employee and the department should proceed by compensating the individual via payroll.

A Note on Honoraria: Use of honoraria must be limited to distinguished guests of the University who accept an occasional invitation to provide short-term expertise to a class or participate in a presentation. If a guest teaches the bulk of a course or writes course material, he or she should not be paid with an honorarium. Additionally, if the guest prescribes his or her fee or the fee is negotiated, it should not be considered an honorarium; an honorarium is intended as expression of thanks, rather than a payment. Requests for honoraria should be directed to Accounts Payable. A Worker Classification Pre-Qualifying Questionnaire is not required for honoraria.

Independent Contractor Vetting Process

To determine whether a service provider may be classified as an independent contractor, the service provider and University unit manager or principal investigator must fill out a [Worker Classification Pre-Qualifying Questionnaire](#) and send to the [Accounts Payable Manager](#). The Manager may request supporting documentation to complete the review. The following documentation may be helpful: client list, copies of general advertisements, brochures, business cards, letterhead, website address, or list of qualifications/experience to substantiate the provider's independence.

Accounts Payable will review the Questionnaire and accompanying documentation to determine the proper classification for the service provider. In the event of a disagreement, Accounts Payable may consult the Comptroller. The Comptroller's judgment is final.

Once the Accounts Payable department has analyzed the Questionnaire and determined if the service provider should be classified as an employee or independent contractor, Accounts Payable will notify the requesting manager or principal investigator via email.

Agreement with the Independent Contractor

If Accounts Payable determines that the service provider should be classified as an employee, the department should follow the normal hiring process and contact its Payroll Coordinator for guidance and assistance.

If Accounts Payable determines that the service provider may be classified as an independent contractor, then the University must enter into a contract with the service provider. In its email to the

requesting manager or Principal Investigator (PI) confirming that the service provider may be classified as an independent contractor, Accounts Payable will copy the Sourcing & Procurement department. Sourcing will use information from the Questionnaire to determine the appropriate form of contract for the engagement and send the manager/PI and service provider the form. In the same email, Sourcing will provide the link which the service provider may use to register as a University supplier (except where Sourcing determines that the External Service Provider Form and Contract (described below) is appropriate).

There are distinct processes for entering into agreements for research-related and non-research-related services. Research-related services are those services supported by an externally sponsored program. Non-research-related services are all other services.

I. Research-Related Services

When it is necessary for the University to contract with third parties to provide research-related services, the Principal Investigator is responsible for completing the Pre-Qualifying Questionnaire process above, for ensuring compliance with the University's generally applicable Conflict of Interest Policy (<http://www.bu.edu/ethics/conflict.pdf>) and the University's Policy on Investigators' Conflicts of Interest (<http://www.bu.edu/handbook/ethics/policy-on-investigators-conflicts-of-interest-2/>), and for ensuring that an appropriate agreement is put in place.

The Research-Related Consulting Agreement will describe the project on which the service provider will work, the term of service, the scope of work anticipated, the rate of pay, and other terms governing the arrangement.

The Principal Investigator must complete Sections 1-5 of the Research-Related Consulting Agreement and attach a detailed Statement of Work, the Financial Conflict of Interest Disclosure form (FCOI) (<http://www.bu.edu/orc/coi/forms/>) completed by the PI and service provider, and, for individual service providers, a completed Worker Classification Pre-Qualifying Questionnaire. The Principal Investigator and either the Center Director, Department Head, or Dean (as appropriate) should sign the Agreement and return it to the Office for Sponsored Programs (OSP) representative responsible for the relevant sponsored program. OSP will send the FCOI to the Office for Research Compliance for review. OSP will also verify that the proposed funding source may be used for the Consultant's fee and expenses and, if it may, will send the agreement to Sourcing & Procurement. In some circumstances, Sourcing will also send the agreement to the Export Control Director for review. Next, Sourcing will contact the service provider to finalize the agreement before execution. Sourcing will also determine whether it is necessary to require the service provider to obtain (or confirm that it has) insurance. Once the agreement is finalized, Sourcing will coordinate execution of the agreement by an authorized signatory for the University and the service provider.

The PI (or the PI's designee) will then process a shopping cart to encumber the funds for the services. Sourcing will issue a purchase order to the service provider permitting work to begin.

II. Non-Research-Related Services

When the University wishes to contract with third parties to provide non-research-related services, the unit or department manager is responsible for completing the Pre-Qualifying Questionnaire process above, for ensuring compliance with the University's Conflict of Interest Policy (<http://www.bu.edu/ethics/conflict.pdf>), and for contacting Sourcing & Procurement to ensure an appropriate agreement and order are put in place before work begins.

Depending on the details of the engagement, there are two possible procedures:

Procedure 1: For a service provider who will perform services more than once over more than thirty (30) days AND/OR for fees of \$10,000 or more, the service provider must register as a supplier with the University at www.bu.edu/supplier. Before the engagement begins, the service provider and the University must enter into a written agreement and the University must issue a SAP purchase order. The manager ordering the services must work with Sourcing & Procurement to ensure that the agreement (e.g., Master Services Agreement, Consulting Agreement, or Freelance Agreement), supplier registration, and purchase order are completed.

The manager must complete the blank sections of the Agreement and attach a detailed Statement of Work, the completed Worker Classification Pre-Qualifying Questionnaire, and an explanation of the selection process and cost analysis for the service provider and return the completed document to Sourcing & Procurement unsigned. In certain circumstances, Sourcing will also send the contract to the Export Control Director for review. Next, Sourcing will contact the service provider to finalize the agreement before execution. Once finalized, Sourcing will coordinate execution by an authorized signatory for the University and the service provider.

Next, the manager will process a shopping cart to encumber the funds for the services. Only when the Agreement has been signed and the shopping cart placed, may work begin.

Procedure 2: For a service provider who will perform a one-time service for less than thirty (30) days and for fees of less than \$10,000, Sourcing will provide the External Service Provider Form and Contract. Once the manager has completed the Form, s/he should send the signed form, the Worker Classification Pre-Qualifying Questionnaire, the service provider's W-9 (or valid tax form), and the invoice to Accounts Payable for payment. In certain circumstances, the Form will also be sent to the Export Control Director for review. For this kind of arrangement, the payment terms may be net 30.

Definitions

A glossary of terms used in these guidelines that have specialized meaning:

Term	Definition
External Service Provider	Term used for any individual who performs services for the University before a determination has been made as to whether the individual is an employee or independent contractor.
Employee	A person hired through the Office of Human Resources and paid via payroll. The University controls and directs the employee's activities, both in terms of what must be done and how it must be done. An employee may be classified permanent full-time or part-time. In certain instances, an employee may be classified as a temporary employee.
Independent Contractor	Also commonly referred to as: contractor, consultant, freelancer, etc. Independent Contractors are individuals, sole proprietors (including single member LLC's), partnerships, corporations, etc., which render services to the general public. Independent Contractors are responsible for the means and methods for completing a task based on specifications in a contract with the University. Contractors generally have multiple clients, maintain a separate workplace and are not supervised or controlled by University employees. Independent Contractors are not eligible for University benefits.
Temporary Employee	A person who works in either a part- or full-time position with assignment duration of less than 9 months. Temporary employees are paid only for time worked, and by definition are not eligible to receive University benefits other than statutory benefits such as worker's compensation and unemployment compensation—they are not eligible for paid time off, holiday or intersession pay, or participation in the University's various benefit plans. Extension of temporary employment status beyond nine months can make individuals eligible for certain benefits and may be in violation of various collective bargaining agreements.

Responsible Parties

Subject	Contact	Phone
Determining Employee / Independent Contractor Status	Accounts Payable	617-353-4270
Employee Hiring	Human Resources	617-353-3500
Research-related consulting agreements	Office of Sponsored Programs	Charles River Campus: 617-353-4365 Medical Campus: 617-638-4600
Research-related consulting agreements (negotiation and execution) and non-research related agreements	Sourcing & Procurement	617-353-2370
Investigators' Conflicts of Interest	Office of Research Compliance	617-638-4214

Related Forms and References

Worker Classification Pre-Qualifying Questionnaire:

<http://www.bu.edu/sourcing/worker-classification-pre-qualifying-questionnaire/>

Supplier Registration

<http://www.bu.edu/sourcing/suppliercenter/registration/>

External Service Provider Form and Contract

<http://www.bu.edu/sourcing/files/2012/02/ESP-Form-and-Contract-RMG-6-8-121.pdf>

University Conflict of Interest Policy

<http://www.bu.edu/ethics/conflict.pdf>

Investigator Policy on Conflict of Interest

<http://www.bu.edu/handbook/ethics/policy-on-investigators-conflicts-of-interest-2/>

Financial Interest Disclosure Forms

<http://www.bu.edu/orc/forms/conflicts-of-interest/>