

BRANDEIS UNIVERSITY POLICY

Policy: Consultant/Independent Contractor

Responsible Office: Office of Financial Affairs and Treasury Services

Responsible Official: Senior Vice President for Finance and Treasurer, Associate Vice President for Finance and Controller

Effective Date: June 1, 2014

Revision Date: December 16, 2014

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Purpose

This policy applies to the work to be performed by consultant/independent contractors (“consultants”) for Brandeis University.

This policy is designed to ensure Brandeis complies with rules and regulations defined by state and federal agencies including but not limited to the Internal Revenue Service (IRS), Massachusetts Department of Revenue; and grant funding agencies including the Department of Justice (DOJ), and the Department of Health and Human Services (DHHS). The procedures and approvals required by this policy ensure compliance regarding classification of consultants (versus employees) and compliance with funding agency policies regarding the need for written policies and procedures related to consultants.

This policy is also designed to ensure compliance with the University’s budget and spending policies. This includes proper preauthorization for the commitment of funds and proper use of approved contracts for consulting agreements.

Applicability

This policy applies to consultants (individuals or firms) retained to provide service to the University. Consultants normally possess specialized skills, knowledge, or credentials that are not readily available among university faculty and staff and the engagement is usually for a defined period of time. For example, consultants may be engaged to provide specialized services for business process modernization and computer system development and implementation. They may also be engaged to provide professional services in connection with the University’s research and academic programs.

This policy is not applicable to subgrants or subcontracts to subrecipients when Brandeis University

has been awarded a grant or contract and a substantial portion of the programmatic work will be performed by an investigator(s) at another institution. Contact the Office of Sponsored Programs for specific procedures applicable to subrecipients funded by sponsored research awards.

This policy does not apply to those services that are used for goods and related services for general operations of the University. For example, services such as construction contracts and related goods and services, service and maintenance contracts, and printing services. Contact Procurement Services for those types of services. It is helpful to note the distinction between consultant services and goods and related services. As an example, if a department is purchasing a large amount of paper stock (goods) for a specific mailing or needs to hire a printer (services) to print the mailing, Procurement Services procedures should be followed. However, if a department wants to hire an individual or a firm (consultant) to design the layout for a specific mailing this policy is applicable.

This policy does not apply to honorariums. Please see the specific policy related to honorariums. An honorarium is an academic term used to describe a “token” payment of appreciation, usually a one-time payment, not for services delivered in accordance with a contract. For example, an honorarium is often paid for a one-time speaking engagement.

This policy does not apply to current employees of the University, which includes any person currently paid through the University payroll system. Contact the Office of Human Resources for questions regarding payments to current employees.

Effective Date

This policy is effective on June 1, 2014.

Policy Details

General Requirements

The department engaging the consultant is responsible for selecting the consultant and reviewing and approving their work. The table below details requirements for consulting engagements depending on the expected expenditure. When a consultant is engaged:

- Budget approval will be required.
- The department may have to submit a Consultant Requisition Form (CRF), which includes information to facilitate consultant/employee classification analysis.
- The University template Independent Consulting Agreement (ICA) can be used or a specific contract can be negotiated.
- Bids or sole source justification may be required.

Consultant Approvals and Other Requirements				
Total Expected Expense	Budget Approval	CRF Review by Financial Affairs (yes/no)	Contract Signature by Financial Affairs (yes/no)	Bid Requirements (See Procurement Policies)
<\$600 per year	Unit Budget Manager or Dept Head PI for grant funded	No	No	No
\$601 to \$4,999	Same as above	Yes	Yes	No
\$5,000 to \$9,999	Same as above	Yes	Yes	Yes
\$10,000 to \$99,999	Same as above and Dean or Assoc. VP	Yes	Yes	Yes
Over \$100,000	Same as above and SVP or Provost	Yes	Yes	Yes

Independent Contractor Guidelines

General

The CRF is used to meet budget approval requirements and to establish Independent Contractor status. Departments are not authorized to commit to any consultant until the CRF is approved by AP.

The IRS governs the classification of independent contractor status and can impose significant penalties if individuals are misclassified as independent contractors instead of employees. The Financial Affairs Office reviews the CRF submitted by the department to

determine whether or not independent contractor status exists before work may begin. If an Independent Contractor status does not exist then the department is directed to contact the Office of Human Resources for guidance.

Research Consultants

Under IRS guidelines, paid research consultants qualify as independent contractors. Research consultation is defined as consultation done as part of a scientific investigation or scholarly pursuit intended for the production of new knowledge. Research consultation costs are charged to sponsored awards. Some examples of activities in this category include reports, presentations, collaborative writing, data interpretation and/or reviews by experts. An expert has specialized knowledge directly related to the science and scope of a project. The NIH Grants Policy Statement defines the difference between Consultant Services and Consortium Agreements and Contracts under grants, and does not distinguish between consultants and research consultation.

Sponsors of funded research may impose further conditions or restrictions. For example, grants awarded by the Department of Justice are expected to adhere to Brandeis' 7-hour work day and may not exceed the maximum daily rate specified in their contract without prior approval from Brandeis and the sponsor.

Contact Sponsored Programs Accounting if you have any questions concerning research consultation provided by individuals versus subcontract agreements between Brandeis University and another institution.

Contracts

Either an ICA or alternative approved contract must be signed by the consultant and the University prior to the start of the work. Alterations or amendments to an ICA require approval by an authorized University signatory.

Payments

General

All payments to independent contractors must be approved by the department. All payments are taxable to the recipient. Payments are reportable to the IRS and the individual if payments to the individual exceed \$600 in any calendar year.

The university does not withhold federal, state, or FICA taxes from payments to consultants who are U.S. Citizens or resident aliens. The consultant must complete a Brandeis University W-9/Vendor Certification Form prior to payment.

Foreign Individuals (Non Resident Aliens - NRAs) providing consulting services in the United States must be authorized to work in the United States to receive payment. The general rule is that NRAs can only receive compensation from their sponsoring institution. Contact the International Students and Scholars Office (ISSO) for assistance in obtaining a Brandeis University-sponsored visa for an NRA. NRAs must complete a W- 8BEN Form. If on a B-1, B-2, WB or WT visa a 9-5-6 Rule Certification Form must also be completed.

Payments to NRAs are subject to 30% federal tax withholding unless the individual claims a treaty benefit. Treaty benefits require the NRA to have a valid US tax identification number and complete additional IRS forms.

Research Consultants

All invoices from research consultants must include period of performance and be supported by time and activity reports describing the number of hours worked by date, and the detailed tasks performed by date. These reports must be inclusive of the invoice and be signed by the consultant with the following certification:

"I hereby certify that, to the best of my knowledge and belief that the above properly represent and reflect the consulting services provided to Brandeis University during the stated period."

Other Information

The university does not provide insurance coverage or employee benefits to consultants.

Please allow sufficient time for processing of all forms and for securing proper approvals before allowing any work to start.

General Procedures

1. Department determines the need to hire a consultant.
2. Department identifies appropriate individual (or firm) to provide services. If required, Sole Source Justification or bid documentation is completed.
3. Department completes CRF, obtains required approvals of the CRF, and sends to AP.
4. AP reviews the CRF for IC status, encumbers the contract amount, and sends the department the consultant authorization number (C number).
5. All contracts awarded with federal funds must adhere to the federal requirements, Brandeis policies and the sponsor's financial guide at the time the contract was awarded.
6. Consultant signs contract, provides a W-9 or W-8BEN, and department sends both to AP.
 - If no changes were made to the standard ICA, work can begin. AP returns fully executed copy of ICA to the department. The department sends copy of fully executed ICA to the consultant.

- If ICA was modified or a contract other than the ICA is being used, Fiscal Affairs must review and approve before work is started. AP returns fully executed copy of ICA to the department. The department sends copy of fully executed ICA to the consultant.

7. Consultant submits invoice to Department. The Consultant must submit number of hours worked including the tasks performed by date.

8. Department writes chart string on invoice, references approved C number and sends to AP.

9. Payment is made.

Contacts

If you have any questions about this policy or need more information, please contact the Office of Financial Affairs and Treasury Services.

Exhibit A.

IRS Guidelines for Determining Independent Contractor Status for Consultants

In deciding whether an individual is an employee or an independent contractor, the individual's title is irrelevant. What is important is the presence or absence of the employer's right to "direction and control" over the individual. The more direction and control an employer exercises over an individual, the greater chance that the individual is an employee. If a person is under the control and supervision of the employer and is bound to obey his/her instructions not only as to the result to be accomplished but also as to the means and methods that are to be used in the performance of the work, then the person is an employee and should be hired according to the policies and procedures of the Office of Human Resources and Employee Relations.

Consultant or Independent Contractor classification is based on facts and circumstances; no one fact determines service provider classification. The IRS currently emphasizes three broad categories: behavioral control, financial control, and the overall relationship. These categories are directly related to the "20-factor test" described in IRS Revenue Ruling 87-41.

Behavioral Control

Independent contractors determine when, where and how they will accomplish the task. Behavioral factors that indicate employee classification are: Brandeis University provides training and/or instructions about how to complete the task, requires a full time commitment for an extended period, requires the individual to perform the services personally or requires progress reports on a regular basis.

Financial Control

Independent contractors have significant investments in their businesses and can maximize their profits by managing costs. Some financial factors that indicate employee classification are: Brandeis furnishes equipment, materials, and supplies, reimburses for travel and business expenses, and accepts timesheets for hours worked. A service provider who works at home generally does not have a significant investment in the business.

Relationship

Independent contractors have a broad customer base. Some relationship factors that indicate independent contractor status are: performs services for multiple customers at the same time, advertises their business, cannot be fired if they produce a result based on the specifications of the contract, is independent of activities within the hiring department, and a continuing relationship is not anticipated. Projects will be awarded only when the need arises. If the service provider works primarily for Brandeis University, the service provider should generally be classified as an employee.

The following tables may be used as a guide to assist you in determining whether or not an individual may be viewed as a consultant under IRS guidelines for some of the tasks commonly performed at the University. Space prohibits a complete listing of available consultant services available. Please contact AP if you have any questions. The table assumes no existing employment relationship with the University.

Consultant Status Indicated	Employee Status Indicated
Architect or Engineer	Accountant
Artist	Administrative Assistant
Accounts Receivable Management	Administrative Manager
Accounting or Auditing Services	Bookkeeper/Accountant
Attorney	Budget Manager
Executive Search Firm	Cashier
Graphic Designer	Computer Programmer
Logistics Analyst	Curriculum Developer
Management Consultant	Department Chairperson
Research Advisor/Collaborator	Principal Investigator
Policy Advisor	Librarian
Software Consultant	Researcher/Lab technician
Specialized Administrative Advisor	Secretary
Website Designer	Teacher/Professor