
9.1 Overview of Consultants (Individuals, Companies, and Corporations)

A consultant or contractor is a firm or an individual offering professional or specialized services for a fixed rate or fee. The university only controls the direction of the consultant's work with respect to work objectives and desired results. The university does not control the method for achieving the results.

Firms and corporations that are in business to offer and sell their services to the public are clearly independent contractors. When the university is required to make payments to individuals, the rules and regulations of a number of governmental regulatory bodies must then be considered. A determination must be made to ensure that payments to individuals for services clearly meet the IRS definition of Independent Contractor. The regulations of the Internal Revenue Service and the Immigration and Naturalization Service (with respect to Non-Resident Aliens) and the State of Georgia and university must be followed.

A consultant should be used only when the services are not readily available from existing employees or where the services cannot be performed more economically or satisfactorily through the university employment process.

Any individuals who perform services for the university are employees unless the relationship satisfies the IRS standards for Independent Contractor. Further discussion of this determination is provided in section 9.2.1 below.

9.2 Policy

9.2.1 Classification of Independent Contractors versus Employees

Financial obligations incurred by the university for employees is clearly different than the obligations incurred for independent contractors. The university is responsible for the payment and/or withholding of federal and state unemployment taxes, FICA, income taxes, and related payroll benefits for those individuals where an employee/employer relationship exists. Independent contractors are responsible for their own liabilities.

The department head of the department seeking to hire the consultant working with Human Resources must make the determination of independent contractor versus employee. Section 5.5 of the Board of Regents Business Procedures Manual provides extensive guidance that may be utilized in determination of status (employee versus independent contractor). In addition, the following questions may be helpful. If the answer to any of the following questions is “yes”, then it is highly likely that the individual cannot be treated as an Independent Contractor.

- Does the individual provide essentially the same service as an employee of the university?
- Is the individual a current employee (or former employee within the previous 12 months) of the university providing the same or similar services?

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- Is it expected that the university will hire this individual as an employee immediately following the termination of his/her services as a consultant?
 - Does the university control how the individual will perform or accomplish the service?
 - Will the individual supervise or control university employees in accomplishing the service?

If any of the above questions are answered as “yes”, please consult the Office of Human Resources for assistance in determining the status of the individual.

9.2.2 Types of Consultants

Instructors or Lecturers (Non-Faculty)

Individuals providing a service to the university as Continuing Education speakers or other short-term instructors may be handled as independent contractors or employees depending upon the determination as indicated in Section 9.2.1 above. Generally, if the instructor or lecturer is to teach a short course (less than two weeks, i.e., conference/workshop), and the university does not anticipate using the instructor/lecturer for additional courses, then the individual may be classified as an independent contractor. Section 5.5 of the Board of Regents Business Procedures Manual has extensive tests and conditions for determining classification of employees vs. independent contractors, and should be utilized when making a determination of classification. Contact the Department of Human Resources for appropriate procedures for payment as an employee, and for assistance in determination of classification.

Honorariums

Overview

An honorarium is a one-time payment for short-term services where the university does not expect a particular result. Nonresident Alien individuals may receive honorarium payments with a J-1, B-1, or B-2 visa. Most other visas do not permit honoraria or other service payments.

- Honorariums must be paid to individuals and not to companies or organizations
- Honorariums may not be paid to Clayton State University employees including student employees
- The limitations discussed in Section 9.2.5 regarding State of Georgia employees or employees of other university system institutions applies to payment of honorariums.

When to Use

- An honorarium must be paid for services provided and not used to make an award

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- The service provided is one where Clayton State University does not expect a particular result. Examples include:
 - Guest lecturers
 - Presentation of research results
 - Reading of papers
 - Participation or leading of colloquiums, workshops, and seminars
 - Presentation of lecturers

The services provided must be short-term in length. Short-term is defined as less than two weeks from start date to end date (no matter the length of service between). Services over a longer period of time may not be classified as an honorarium.

Services vs. Expenses

- The amount of the honorarium may include payment for services along with an amount intended to cover travel expenses
- Amount for services (honorarium) may be paid and expenses reimbursed with appropriate receipts. Payment of honorarium and expenses should be requested at the same time and on the same request. A written request from the individual/consultant must be received and matched with the purchase order before payment may be processed. The written request must also have the requesting department's approval prior to processing. If this is the first payment to this individual, a W-9 and **Vendor Set Up** form must also be completed. This form may be accessed from the web site at <http://www.clayton.edu/portals/3/docs/W-9-Vendor-Set-Up-Form.pdf>.

Documentation Requirements

- Honorariums must be described in a contract approved by the Vice President for Business & Operations before the service is provided
- An official announcement, invitation letter, flyer, etc. must accompany the request for payment of the honorarium
- Receipts for travel expenses, if claimed separately, should be submitted with a Travel Expense Statement
- The individuals current mailing address and tax id number must be provided
- If the individual is affected by the limitations outlined in Section 9.2.5 (State of Georgia Employee or Employee of another USG Institution), a statement is required to certify compliance with the conditions in Section 9.2.5.

Professional Services

Professional services are defined by Official Code of Georgia §14-7-2 as follows:

Professional means the profession of certified public accountancy, architecture, chiropractic, dentistry, professional engineering, land surveying, law, psychology, medicine and surgery, optometry, osteopathy, podiatry, veterinary medicine, registered professional nursing, or harbor piloting.

As explained in the Board of Regents Business Procedures Manual, section 3:

Generally, professionals that are certified in their fields can be hired non-competitively to do work in the certified field for which they are specifically licensed. Examples include:

- A CPA may be hired to provide accounting services, but not management consulting without a competitive process.
- An architect may be hired to design a building, but may not develop a campus plan without a competitive process.

9.2.3 Exemptions from Competitive Bid Process

Professional Services

As explained above, professionals that are listed in the Official Code of Georgia §14-7-2 can be hired non-competitively to do work in the certified field for which they are specifically licensed. If the professional is not listed in OCGA §14-7-2, then the procurement of services must be competitively bid or a justification made for the use of sole source procurement. DOAS has further specific services that are exempt from the competitive bid process also. The classification of “Consultants” has been exempted from the competitive bid process by DOAS.

Sole Source Procurements

There are circumstances where only one provider has the unique combination of experience and/or qualifications to perform the task. In addition to the normal requisition for services that is submitted to start the procurement process, a justification must be provided for dealing directly with one vendor for the procurement. The justification must be on a **Sole Source Justification** form. Such procurements must be posted on the DOAS registry if \$25,000 or more to make potential vendors aware of the need. Contact the CSU Procurement Services Department for assistance with sole source justification.

9.2.4 Determination of Status – Employee versus Independent Contractor

IRS regulations and possible resulting penalties make it imperative that Clayton State University correctly identify whether certain personal service arrangements create an employer/employee or an independent contractor relationship. Generally, if the university determines the time, place, and manner of complying with instructions, provides supervision, provides the place of work, and makes periodic payments then an employer/employee relationship may exist. Section 5.5 of the Board of Regents Business Procedures Manual provides extensive documentation on this subject with an easy to use chart for determining whether a person is considered an employee or an independent contractor. Additional guidance on this subject may be obtained from Human Resources.

9.2.5 Limitations on using State of Georgia Employees or Employees of Other Institutions

State of Georgia Employees

Official Code of Georgia §45-10-25 restricts the utilization of State of Georgia employees as consultants to the following:

- Chaplain
- Fireman
- Any person holding a Doctoral or Master's degree from an accredited college or university
- Physician
- Dentist
- Psychologist
- Registered Nurse
- Licensed Practical Nurse
- A Certified Oral or Manual Interpreter for Deaf Persons

For payment to a State of Georgia employee, the following must be provided:

- Certification from the requesting department documenting the need for services and why the best interest of the State will be served by obtaining such services from a person presently employed by the State.
- Certification by the department, agency, etc. employing the payee that the performance of such services will not detract or have a detrimental effect on the performance of employee's full-time employment. This certification may be by letter, and should state the employee (by employee's name) is available to perform the specified services and that the performance of such services will not have a detrimental effect on his/her full-time employment. This certification should be signed and dated by the employee's supervisor as well as the agency head/CEO.
- Agreement of procedures for performance of additional services, classification and compensation.
- Payment may be made directly to the employee from Clayton State University.
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Employees of another University System of Georgia Institution

If the payee is an employee of another University System of Georgia institution, the rules governing "Joint Staffing" outlined in the Board of Regents Business Procedures manual section 5.3.3 must be followed. The **Employee Compensation Agreement** form must be completed and submitted to the employee's supervisor and the President for approval. The completed **Employee Compensation Agreement** form allows the employee's home institution to pay him/her via payroll procedures with Clayton State University providing reimbursement to the employee's home institution. The **Employee Compensation**

Agreement form is available at the following website:
http://www.usg.edu/business_procedures_manual/documents/employee_compensation_agreement.pdf.

9.3 Consultant Contract Preparation and Approval

The preparation and approval procedures described below apply for general contracts used for Consultants. They do not apply to Public Works Contracts. Public Works Contracts are subject to policies of the Board of Regents. They are generally funded through the Georgia State Finance and Investment Commission (GSFIC) or by State Appropriations for capital facility repair and rehabilitation. Contract preparation and approval for Public Works Contracts is not within the scope of this section

As of July 1, 2013, Senate Bill 160 amends O.C.G.A. 13-10-91(b) (1) that requires any contract with a state agency for labor or services in excess of \$2,499.99 must submit a signed and notarized affidavit(s) on standard forms attesting to their compliance with the terms of the federal work authorization program (also known as E-Verify), or state a specific exemption from this requirement.

Clayton State University uses a standard contract available to fit all circumstances, except Public Works Contracts. A standard “Contracted (Consultant) Services Agreement” form is available. This form may be found at <http://www.clayton.edu/Portals/535/docs/standard-contract.pdf>.

If the “Contracted (Consultant) Services Agreement” form does not conform to the requirements for the proposed contract, then the form should have a scope of work added.

The Vice President of Business & Operations is responsible for ensuring that the business interests of the university are protected in the terms and operations of proposed agreements, and is also responsible for determining that the university complies with all provisions of contracts, grants, or agreements with individuals, companies, or agencies external to the university.

All contracts entered into in the name of The Board of Regents of The University System of Georgia, by and on behalf of Clayton State University are subject to the Policies and Procedures of the State Board of Regents. Many contracts are also subject to State Purchasing regulations and to statutory constraints on contracts entered into by State Agencies.

No member of the university, faculty, or staff may sign a contract without specific authorization from the President. The Office of the Vice President of Business & Operations is responsible for approving and signing all contracts, agreements, and memorandums of understanding for over \$2,500.00.

Applicable contracts, agreements, and memorandums of understanding must be accompanied by a completed Clayton State University Contract/Agreement/MOU Review Process and Routing form along with any applicable affidavits. This form may be found at <http://www.clayton.edu/Portals/15/docs/contract-routing-form-10-25-12.pdf>.

A further explanation of contract review, along with a listing of certain exemptions from the review process, may be found at <http://www.clayton.edu/contract-administration>.

The proposed contract along with the review process and routing form should be sent to the Office of the Vice President for Business & Operations after the form has been approved by the Dean, Director, or Department head.

The contract reviewer will provide feedback directly to the university's contracting party within 5 business days. All changes to the proposed contract must be approved by the contract reviewer before the contract may be executed. Specific instructions are provided on the review process and routing form for contract execution.

9.4 Payment Procedures

9.4.1 Account Numbers

Account numbers to be used on payments to consultants will be charged to the series of accounts defined as "Per Diem and Fees". A list of standardized account numbers to be used is published in the Board of Regents Business Procedures manual in section 2, and is included in the section below. These proper account numbers must be referenced in any payment request.

9.4.2 Reimbursable Expenses

Payments for itemized expenses may be paid only to the consultant. The method for reimbursements must be specified in the consultant's contract for services. Travel reimbursements may be made based on state travel regulations, federal per diem rates, or an alternate basis as agreed upon in the consulting agreement. The department head is responsible for determining if charges for reimbursable expenses are proper and reasonable.

All reimbursable expense items must be supported by receipts or adequate itemization and certifications.

9.4.3 Requests for Payments to Consultants

Prior to the first payment being processed to the consultant, an IRS W-9 form must be completed by the contractor. The IRS W-9 form will provide information for use by accounts payable in completing the Vendor Set Up form. The IRS W-9 along with the Vendor Set Up form can be found at <http://www.clayton.edu/portals/3/docs/W-9-Vendor-Set-Up-Form.pdf>.

The completed IRS W-9 form must be sent to the Accounts Payable Department before any payment can be processed.

The vendor should provide an invoice for services rendered. The department should approve the invoice after auditing to ensure compliance with the contract, and send the approved invoice to Accounting Services for payment. The account numbers to be charged for the fee should be selected from the following list:

- 751101 Architect
- 751102 Attorney
- 751103 Consultant
- 751104 Engineer
- 751105 Physician
- 751106 Interpreters
- 751107 Veterinarian
- 751108 Honorariums/Speakers
- 751109 Information Technology Consultant
- 751110 Other Per Diems
- 752100 Reimbursable Expenses

9.5 Reporting

9.5.1 Reporting to the IRS and Consultant

All payments to non-employees (excluding reimbursable expenses and payments to corporations) totaling an aggregate of \$600.00 or more will be reported to the IRS on form 1099.

9.5.2 Reporting to the Georgia Department of Audits and Accounts

The Georgia Department of Audits and Accounts is required by state law to compile an annual listing of amounts paid for “Per Diem and Fees”. Clayton State University is required to submit an electronic report on an annual basis after the close of the fiscal year to the Department of Audits and Accounts to facilitate the production of this annual listing.