Classification & Hiring of Service Providers

Independent Contractors OR Temporary Employees

(Procedure 5-21)
Why we are here...

- IRS audit determined LSSC (as a hiring firm) is not managing the hiring of service providers correctly:
  - Temp Employees
  - Independent Contractors (sole individuals like consultants)

- Upon our own process investigation discovered too many service “legal” contracts which aren’t really legal.
Defining Latitude…

**NO Latitude:**

- Per IRS, LSSC must prove Independent Contractor eligibility **JOB by JOB**
- Per Legal, qualified IC-ers must have a bonafide contract, e.g. Req/PO

**Latitude:**

- Processing of documents: EAR, Temp Employee Packet, Adjunct Packet
- Addendums to Req/PO
Flowchart: Hiring Service Provider (SP)

Determine Need for Service Provider and Obtain General Approval from Supervisor to Hire

Service Provider Could Be:

Independent Contractor (Claims/Desires to be) OR Temporary Employee (Desires or Does not Care)

See Next Page

Submit EA w/Duties, Complete w/Temp the Temp Packet; submit all To HR; or if Adjunct for Credit then complete Adjunct Packet & submit to Dean then HR
Flowchart: Hiring Service Provider, cont’d.

Service Provider Claims/Desires to be Independent Contractor

Complete “Short Test” & Submit to HR

Definitively YES and SP agrees

1. Obtain & Send to HR copy of Short Test and any of the following: 941, K1, W9, 1099, SS-8 Letter of Determination, Business License, Approval Letter of Incorporation

2. Create Req/PO, add Addendum if necessary & Process

OR

Definitively NO and SP Does Not Agree

Assist SP in completing SS-8; Have SP send SS-8 to IRS for determination. Meanwhile the SP must be employed as a Temp.

From SS-8 IRS Determines SP as:

IC or Temp

Then Send IRS Letter To HR and

OR

Agrees to be Temp

See Temp Employee Box (previous page)
SHORT TEST for Service Provider Determination
(Of Employee-Type Classification)

All of the following questions must be answered on this Short Test*. Even if the answers to questions 1 & 2 are negative the intended provider may still qualify as an independent contractor providing Question 3 is answered “definitively yes.” The provider may still need to complete as directed by HR a W9, submit to the IRS form SS-8 and subsequently produce the Letter of Determination or Information from the IRS. The completed short test must be submitted to HR with any appropriate IRS documentation as indicated below.

A. Describe briefly the service that the individual to be hired will provide:
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

B. Specific questions to ask of provider or self about the work to be performed.

1. Has this intended service provider performed work for the College as an Independent Contractor before?
   a. No ___
   b. Yes ___ (If yes, then answer the following questions:)
      i. When
      ii. By Whom (hiring supervisor & org)
      iii. Was that work the same as the work now needing to be accomplished

2. Has this intended service provider filed an IRS 941, or K1 or SS8 form for the same work as being requested now?
   a. No ___
   b. Yes ___ (If yes, then answer the following questions:)
      i. Which IRS form specifically? ____________________________
         ii. Will the provider present a copy (with all accounting info blackened out) of a 941, or K1, 1099, or SS8 form with IRS Letter of Determination to HR? ___ Yes ___No

3. As the hiring manager will you be controlling or directing ONLY the result of this person’s work (and NOT the means and methods by which the result is accomplished)?
   Before selecting either a. or b. below, answer all the Process Subset Questions which will assist you in making the correct selection here.
   a. Definitively Yes? ___
   b. Definitively No? ___

   Process Subset Questions:
   1. Will you be instructing the person as to:
      a. Where and how to work ___ Yes ___No
      b. What tools or equipment to use ___ Yes ___No
      c. What workers to hire or to assist with the work ___ Yes ___No
a. Where to purchase or acquire supplies from the hiring firm  
   ___Yes   ___No  

b. What work must be performed by a specified individual  
   ___Yes   ___No  

c. What order or sequence to follow in performing the work  
   ___Yes   ___No  

2. Will you be giving any training to the individual so that he/she can perform the work in a particular manner?  ___ Yes   ___No  

3. Will the person be provided employee-type benefits?  
   ___ Yes   ___No  

4. Select the more accurate statement from the following:  
   ____  Yes, the person will NOT realize potential personal loss or gain.  
   ____  No, the person will realize potential loss or gain.  

   If you answered “Yes” to any of the above 1-4 questions, then return to 3, and check “Definitively No.”  

   AND therefore the intended service provider must be classified as a Temporary Employee and not and Independent Contractor.  

* Note: This short test is an excerpt from IRS 15-A SS-8 form. It is designed to 1) assist in determining if the full SS-8 form needs to be completed by the intended independent contractor/service provider and sent to the IRS; or 2) counsel the service provider that this preliminary screen points to a Temporary Employee classification which they should seriously consider. It is not a substitution for a completed SS-8 and its subsequent Letter of Determination from the IRS.
HIRING INDEPENDENT CONTRACTORS
(VS. Temporary Employees)
For details consult PRO 5-21 – Independent Contractors

MAJOR POINTS:
• Hiring Supervisor must submit to HR a completed “Short Test for Determining Service Provider Employee-Type Classification.” Form can be found on internet under HR.
• Hiring Supervisor must obtain from a potential IC employee appropriate documentation of proof as an existing IC and submit such to HR. Valid documentation is a W9 AND a 1099, 941, or K1, or SS8 with accompanied IRS Determination or Information Letter). Black out any $$ amounts.
• Hiring supervisor will submit to HR a draft contract with a suggested fee rate for the potential IC employee. HR will review, determine and notify the hiring supervisor of the official classification of the potential employee as either an IC or Temp Employee. HR will also review and determine if the fee rate relative to the contract work is appropriate. If such is not, HR will provide counsel to the hiring supervisor on an adjusted fee rate to negotiate with the potential IC.
• Hiring supervisor for a designated IC will complete a Purchase Requisition and obtain appropriate approvals based upon the fee structure as defined in PRO 5-21 and FinSvcs/Requisition policies.
• Hiring supervisor will oversee the IC to ensure the deliverables are met per the contract, complete a Receiving Report and submit the IC’s invoice for payment to Financial Services. Note: the contract may define payment terms and schedule per deliverables.
• Questions about this process can be directed to either HR or Financial Services.
Responsibilities of Hiring Supervisor

Managing the employee appropriately:

**Temps:**
- Scheduling, assigning & directing the work
- Ensuring temp does not acquire employee benefits or rights (i.e. be on committees, etc.) and is appropriately reminded of temp status

**IC:**
- Creating the Req/PO, adding contract Addendum to cover specific details/agreements, etc.
- Contracting & monitoring outputs per the PO
- Completing Receiving Report of work/duties completion & approval for payment
LAKE-SUMTER STATE COLLEGE

CONTRACT OF EMPLOYMENT

CONSULTANT/ INDEPENDENT CONTRACTOR

This contract is entered into between the District Board of Trustees of Lake-Sumter State College, hereinafter called the Board, and _____________ hereinafter called Management Consultant, this 2nd day of July, 2007 in consideration of mutual agreements, covenants, terms and conditions for services and/or outputs contained in Attachment A as assigned to Management Consultant’s position as ______________. The Board agrees to employ the Management Consultant and the Management Consultant agrees to accept the position of ______________ for a period of twelve calendar months ending June 30, 2008, and to pay the Management Consultant for services rendered at the hourly rate of $____. The Management Consultant will submit an invoice for work performed and after verification by a designated college official that the work has been successfully completed the invoice will be processed for payment. The parties further agree as follows:

1. The Management Consultant is employed in a temporary contracted position and the Management Consultant shall not perform, or be entitled to be paid for, services rendered after the termination date.

2. It is expressly understood and agreed that (except as provided in Paragraph 6 below) neither the Management Consultant nor the Board owes any further obligation under this agreement after the contract ending date of June 30, 2008, except for the Management Consultant’s obligation to perform uncompleted duties in accordance with Paragraph 4. By signing this agreement, the Management Consultant affirms that he/she is employed in a position that will not lead to an award of an additional or continuing contract and that no legal cause shall be required of the Board in making a decision not to enter into a future contract with the Management Consultant.

3. The Management Consultant agrees to perform those services or render those outputs required for the aforementioned position as defined in Attachment A in a location designated by the President as authorized by the Board. Such a location will contain a appropriate basic office furniture, phone and computer with associated computer/network support for the sole purpose of assisting the accomplishment of services and/or outputs as define in Attachment A.

4. In the event prescribed services or outputs have not been completed on the final day as set forth in the this contract, the Board may withhold the compensation until services and/or outputs have been accomplished.

5. The Board may suspend or dismiss the Management Consultant for cause, or for failure to comply with the terms of this contract, at any time during the term of this contract.

6. This contract shall include and be subject to all applicable laws enacted by the Legislature and all applicable administrative rules adopted or promulgated by the Florida Department of Education, the Board of Trustees of this College and each other state or local government agency having jurisdiction to take action affecting the operations of this College. Furthermore, this contract shall include and be subject to the right of such governmental bodies to lawfully make modifications, additions, and deletions to those laws, rules, regulations, policies and guidelines during the term of this contract.

Management Consultant Date

President Date
Responsibilities of HR

- Determining Compensation of Service Provider per Duties or Outputs
- Official Hiring of Service Provider with assistance from hiring supervisor
- Reviewing all appropriate documentation: Short Test, EAR, Temp & Adjunct Packet contents, Timesheets
- Approving Req/PO for IC work
- Processing Timesheets/Payroll for Temps
- Notifying President of potential pay inequities