



<b>Process for Authorizing Use of Consultants</b>	<b>Richard Sakshaug, Joyce Johnson</b>	<b>May 18, 2015</b>
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## Process for Authorizing Use of Consultants

<b>PREPARED BY</b>	<b>ORGANIZATION</b>	<b>DATE</b>
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## Change Record

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## **I USE OF INDEPENDENT CONTRACTORS/CONSULTANTS**

AUI/NRAO awards contracts to independent contractors/consultants for the procurement of professional services from an individual or consulting company on a temporary basis for a single project when there is no other method to meet the requirements. AUI/NRAO Contracts and Procurement department (CAP) uses Consultant Agreements for individuals that operate under their own name, and Master Agreements for consulting companies. Requestors anticipating awards to consultants must consider the following:

- A. The work requirement being considered for a consultant must pass the IRS “employee or independent contractor” test to be sure that it’s not more appropriate as employee effort.
- B. Consultants must work less than 1,040 hours in a one-year period, and the consultant services must be completed within one year.
- C. Competition will be sought prior to making award to a particular consultant. Requestors should conduct market research to determine if there are other viable sources to meet their requirement. A source and price justification form is required.
- D. The consultant may not direct NRAO personnel or make decisions on behalf of NRAO.
- E. Consultants are paid based on the submission of invoices, preferably monthly, for actual hours worked in the prior month, at the hourly rate stated in the agreement, or upon completion of tasks if a fixed price contract is used.
- F. If travel and other related expenses are stated as requirements in the Statement of Work, AUI/NRAO shall reimburse consultants for such approved costs incurred, upon submission of a detailed invoice and backup documentation, in accordance with NRAO travel policy.
- G. Consultants must supply their own equipment, computers and materials.

## **2 PURPOSE OF PROCESS**

The Department Manager/Supervisor, Division Head, Budget department, and Department of Human Resources must review all proposed consultant requisitions to make sure that award to the selected consultant is appropriate considering the restrictions on former AUI/NRAO employees, the use of consultants versus employees, the price of the effort, and other conflicts that may exist.). HR makes the final determination, and only after HR approval is secured can CAP proceed with the award as requested by the requestor.

## **3 THE APPROVAL PROCESS**

Before a consultant is awarded a contract, the following approval steps must be accomplished:

- A. The process begins when a requestor identifies a requirement that he/she believes may require the use of an independent contractor/consultant.
- B. The requestor will review the IRS Guidelines for Independent Contractors (Attachment A) to determine whether the effort is more appropriate for an employee or for an independent contractor.
- C. If the requestor determines the requirement is best suited for an independent contractor/consultant, he/she will draft a Statement of Work and conduct research to find consultant sources for the effort. The requestor will acquire budget estimates and past performance information (list of references, company profile, or individual resume, as appropriate) on independent contractors/consultants considered for award.
- D. When the requestor has selected a proposed consultant to complete the requirement, he/she will complete the Authorization for Independent Contractor/Consultant form (Attachment B), attach the additional documentation related to the consultant, and submit it to the Department Manager/Supervisor for review and approval, copying the Contracts and Procurement Manager.
- E. The Department Manager/Supervisor reviews the form to determine the need for the effort, the availability of department budget, and any other

considerations. If approved, the department manager will sign and submit the form to the Division Head for review and approval.

F. The Division Head reviews the form for the same considerations as the Department Manager/Supervisor. If approved, the Division Head will sign and submit the form to the Budget department for review and approval.

G. Budget will review the form for appropriate use of accounts and budget availability. If approved, Budget will sign and submit the form to HR for final review and approval.

H. HR will review the form, considering:

1. Ensure bona fide break in service (if the consultant being considered is a former NRAO employee, there needs to be at least a 12 month break in employment).
2. Determine if effort is appropriate for independent contractor/consultant.
3. Verify that the anticipated hours of effort do not exceed 1,040 hours in a one-year period, and that the consultant services are anticipated to be completed within one year.
4. Determine if the proposed price of the effort reasonable based upon the estimated price for the same/similar effort if it was accomplished by an employee.
5. Review the past performance information to determine if the consultant is competent to perform the effort and have no conflicts of interest.

I. Upon approval and signature, HR will submit the completed form to CAP.

J. CAP will notify requestor of the completion of the authorization process.

K. CAP coordinates with the requestor to set up a Consultant Agreement or Master Agreement, and the requestor submits the requisition into P2P. The requisition will require a sole source justification of the proposed consultant, or evidence of competition, to determine if the proposed contractor is the best value to AUI/NRAO. CAP will follow their established contracts and procurement procedures for the award and administration of the resulting agreement.

- L. If at any point in the process, clarification is required or approval is not granted, that department will communicate their concerns with the requestor, HR and CAP. The consultant will not be awarded a contract without the signatures of all parties required.

Attachment A: IRS Guidelines for Independent Contractors

Attachment B: Authorization for Independent Contractor/Consultant form



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## IRS Guidelines for Independent Contractors/Consultants

Under United States Common Law, a worker is an employee if the person for *whom he or she works has the right to direct and control the way he or she works, both as to the final result and as to how, when, where and what sequence that work is being done.* The IRS states the employer has the right to control the actions of the **WORKER**.

The IRS has created guidelines to help determine if the actions and duties are appropriate for a contractor or an employee. The goal is to ensure clarity of Independent Contractor/ Consultant relationship with NRAO. (The answers in parenthesis indicate the actions of an Independent Contractor/Consultant.)

1. Are you required to comply with instructions of when, where, and how work is to be done? **(NO)**
2. Does your client provide you with training to enable you to perform a job in a particular method? **(NO)**
3. Are the services you provide integrated into your client's business operation? **(NO)**
4. Must the services be rendered by your personally? **(NO)**
5. Do you have the capability to hire, supervise, or pay assistants to help you in performing the services under contract? **(YES)**
6. Is the relationship between you and the person or company you perform for a continuing relationship? **(NO)**
7. Who sets the hours you work? **(You Do)**
8. Are you required to devote your full time to the person or company you perform the services for? **(NO)**
9. Is the work performed at the place of business of the potential employer? **(NO)**
10. Who directs the order or sequence in which the work must be done? **(You Do)**
11. Are you required to devote your full time to the person or company you provide services for? **(NO)**
12. What is the method of payment- hourly, commission or by the job? **(Contingency or project milestone-based payments are ideal.)**
13. Are your businesses and/or travel expenses reimbursed? **(NO)**

14. Who furnishes tools and materials used in providing services? ( **You do**)
15. Do you have significant investment in facilities used to perform services? ( **the more substantial your investment the better**)
16. Can you realize both profit and loss? (**YES**)
17. Can you work for a number of firms at the same time? (**YES**)
18. Do you make your services available to general public? (**YES. It is good to have a business listing in various public outlets**)
19. Are you subject to dismissal for reasons other than NON PERFORMANCE of contingent specifications? (**No. Also your client should provide at least a weeks' notice. AT WILL TERMINATION makes you look like an employee**)
20. Can you terminate your relationship with our incurring a liability for failure to complete job? ( **Yes assuming you're working on a time and materials basis, you are obligated to deliver on your commitments if you wish to be paid for your efforts**)



# Authorization for Use of Independent Contractor/Consultant

Date of Request: \_\_\_\_\_

Requestor: \_\_\_\_\_ Department/Division: \_\_\_\_\_

Description of effort/tasks (or attach Statement of Work): \_\_\_\_\_

Estimated cost: \_\_\_\_\_ Number of hours estimated for effort: \_\_\_\_\_

Projected Period of Performance: \_\_\_\_\_

Location of Effort: \_\_\_\_\_

Position Funding Source(s):

Account #: \_\_\_\_\_ %: \_\_\_\_\_ Account #: \_\_\_\_\_ %: \_\_\_\_\_

Account #: \_\_\_\_\_ %: \_\_\_\_\_ Account #: \_\_\_\_\_ %: \_\_\_\_\_

Proposed Consultant Name: \_\_\_\_\_

Justification for Use of Independent Contractor/Consultant: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Department Manager/Supervisor: \_\_\_\_\_ Division Head Approval: \_\_\_\_\_

Budget Approval: \_\_\_\_\_ HR Approval: \_\_\_\_\_

*Please forward signed form to CAP*